

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

CLAIMANT: Golf Course Partners Inc.

CASE 41H-0740-R-2021
41H 152500-00
41H 152501-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

INTRODUCTION

Water rights claims 41H 152500-00 and 41H 152501-00, owned by Golf Course Partners Inc. (Golf), appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with issue remarks received during the Department of Natural Resources and

Conservation's (DNRC) review in preparation of the preliminary decree. The issue remarks relate to the claims' priority dates and points of diversion.

The Water Court consolidated the water rights claims into Water Court case 41H-0740-R-2021 and set filing deadlines for Golf to review and verify the claims' priority dates and claimed points of diversion. On July 13, 2021, Golf filed information with the court.

The Water Court ordered Golf to file additional information with the court regarding the historical priority date and flow rate for water right claim 41H 152501-00. Golf did not file additional information with the court.

The Water Court presently resolves the issue in this case.

ISSUES

1. *Whether a preponderance of the evidence supports modifying the points of diversion for water right claim 41H 152500-00 and 41H 152501-00.*

2. *Whether a preponderance of the evidence supports modifying the flow rate and priority date for water right claim 41H 152501-00 consistent with an August 1, 1996 Master's Report appearing in the claim's file.*

APPLICABLE LAW

"The Montana [W]ater [C]ourt has a statutory obligation and the exclusive authority to adjudicate claims of existing water rights." Rule 1(a), W.R.Adj.R. The Water Court resolves issue remarks before issuance of a final decree and may use information submitted by the DNRC, the statement of claim, and any other data obtained by the court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

A properly filed statement of claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628. The party seeking to overcome the prima facie status of a statement of claim, including a claimant objecting to his or her own claim, bears the burden of proof. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

DISCUSSION

1. *Whether a preponderance of the evidence supports modifying the points of diversion for water right claim 41H 152500-00 and 41H 152501-00.*

Water right claim 41H 152500-00 is a decreed sprinkler/flood-irrigation claim for surface water from Bridger Creek in Gallatin County, Montana. An issue remark appearing on the claim's preliminary decree abstract states: "THE LEGAL LAND DESCRIPTION FOR POINTS OF DIVERSION NO. 1 AND 2 COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THE CLAIMED POINTS OF DIVERSION CANNOT BE CONFIRMED." The preliminary decree abstract currently states the claim's Point of Diversion ID No. 1 is a headgate in the SESWNW of Section 32, Township 1S, Range 6E, Gallatin County, Montana, and Point of Diversion ID No. 2 is a headgate in the NESENE of Section 31. The information filed by Golf indicates the legal land descriptions identifying the points of diversion for water right claim 152500-00 are accurate as claimed.

Water right claim 41H 152501-00 is a decreed sprinkler/flood-irrigation claim for surface water from Bridger Creek in Gallatin County, Montana. An issue remark appearing on the claim's preliminary decree abstract states: THE LEGAL LAND DESCRIPTION FOR POINTS OF DIVERSION NO. 1 AND 2 COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THE CLAIMED POINTS OF DIVERSION CANNOT BE CONFIRMED. The preliminary decree abstract currently states the claim's Point of Diversion ID No. 1 is a headgate in the NESENE of Section 31, Township 1S, Range 6E, Gallatin County, Montana, and Point of Diversion ID No. 2 is a headgate in the SESWNW of Section 31. Golf filed information indicating the legal land description identifying Point of Diversion ID No. 2 was incorrect. Golf asserts Point of Diversion ID No. 2 for water right claim 41H 152501-00 is in the NWSENE of Section 31, Township 1S, Range 6E, Gallatin County—not in the SESWNW of Section 31. Golf attached maps to the filing depicting the claims' accurate historical points of diversion.

A preponderance of the evidence overcomes the prima facie status afforded to the originally claimed Point of Diversion ID No. 2. The Water Court modifies the legal land description identifying Point of Diversion ID No. 2 associated with water right claim 41H 41H 152501-00 consistent with Golf's filing. The points of diversion associated with water

right claim 41H 152500-00 and Point of Diversion ID No. 1 for water right claim 41H 152501-00 will remain as they appeared in the preliminary decree. The point-of-diversion issue remarks are hereby resolved and can be removed.

2. *Whether a preponderance of the evidence supports modifying the flow rate and priority date for water right claim 41H 152501-00 consistent with an August 1 1996 Master's Report appearing in the claim's file.*

Water right claim 41H 152501-00 is a decreed sprinkler/flood-irrigation claim for surface water from Bridger Creek in Gallatin County, Montana. An issue remark appearing on the claim's preliminary decree abstract states:

THE WATER COURT HAS BEEN PRESENTED WITH EVIDENCE THAT THE CORRECT PRIORITY DATE FOR THIS WATER RIGHT IS 1865 AND THE CORRECT FLOW RATE IS 1.25 CFS (50.00 MINERS INCHES).

While the preliminary decree abstract currently states the claim's priority date is April 30, 1864, and the flow rate is 4.2 CFS, the findings of fact and conclusions of law in an August 1, 1996 Master's Report appearing in the claim's file indicate the claim's priority date is June 1, 1865, and the claim's flow rate is 50 miner's inches or 1.25 CFS.

On July 13, 2021, Golf filed information with the court asserting the April 30, 1864 priority date and 4.2 CFS flow rate presently associated with water right claim 41H 152501-00 were historically accurate. In support of its assertion, the filing states:

The ditch following the diversion structure is named Bishop Ditch and is referred to as 'J.A. Bishop north side ditch' in Gallatin County District Court Case No. 1594, *Nelson Story vs. Bozeman Water Works*, Line 21. Line 22 of Case No. 1594 states the north side ditch capacity is '168 inches' or 4.2 CFS. Lines 21 and 22 correspond with the water right stating a priority date of 1864 and a maximum flow rate of 4.20 CFS.

The court's review of the Lines 21 and 22 correspond with Golf's assertion.

However, an August 1, 1996 Master's Report in Water Court case 41H-84 (adopted August 29, 1996) appears in the claim's file with the following excerpted findings of fact and conclusions of law:

5. Water right claim 41H-W-152501-00 was filed by Paul F. Boylan J for irrigation. The claimed flow rate of 168.00 miner's inches (4.20 cfs) was based on a water right previously decreed to J.A. Bishop for 168.00 miner's inches (4.20 cfs) of Bridger Creek claiming an 1864 priority date in *Nelson Story v. Bozeman Water Works et. al.*, Case No. 1594, Gallatin County.

6. On November 4, 1988, a Motion and Affidavit to correct water right claim 41H-W-152500-00 was filed with the Water Court. By letter dated June 28, 1989, the Water Court asked for additional information.

7. On August. 6, 1991, Paul F. Boylan filed a Water Right Transfer Certificate with the Department of Natural Resources and Conservation (DNRC) transferring water right claims 41H-W-152500-00 and 41H-W-152501-00 to [Golf].

8. [. . .] Water right claim 41H-W-152501-00 was not objected to nor called in on motion of the Water Court.

9. On April 27, 1991, [Golf] filed a Request for Findings. In summary, the Request for Findings asked the Water Court to enter the following findings:

(1) That the basis of water right 41H-W-152500-00 reflect the water right previously decreed to J.A. Bishop (south side ditch) for 100.00 miner's inches of water with a June 1, 1865 priority date.

(2) That the basis of water right claim 41H-W-152501-00 reflect the water right previously decreed to J.A. Bishop (north side ditch) for 50.00 miner's inches with a June 1, 1865 priority date.

10. After careful review of the Request for Findings and attached copy of the Nelson Story Bozeman Water Works Co. et. al. decree, the Water Court would DENY the Request for Findings in part. It appears that the district court in that cause modified the jury findings, but this Court believes the modification to an 1865 priority only extends to the J.A. Bishop (north side ditch) water right of 50.00 miner's inches. The J.A. Bishop (south side ditch) water right for 100.00 miner's inches would still have an 1872 priority date.

[. . .]

13. On May 27, 1992, a Draft Master's Report was issued with the above Findings.

14. On June 5, 1992, [Golf] filed Comments to the Draft Master's Report requesting that:

(1) the priority date on claim 41H-W-152501-00 be decreed in accordance with the originally filed Statement of Claim with a priority date of April 30, 1864, and

(2) that claim 41H-W-152501-00 be decreed with the originally claimed flow rate of 4.20 CFS.

They have presented no argument or documentation supporting this request.

[. . .]

20. No changes should be made to claim 41H-W-152501-00 at this time as this claim had no timely filed objections or motion of the Court. The following remark should be added to this claim:

THE WATER COURT HAS BEEN PRESENTED WITH EVIDENCE THAT THE CORRECT PRIORITY DATE FOR

THIS WATER RIGHT IS 1865 AND THE CORRECT FLOW RATE IS 1.25 CFS [50.00 MINER'S INCHES].

The Water Court previously ordered Golf to file additional information with the court making sense of the findings of fact in the August 1, 1996 Master's Report, the April 27, 1991 Request for Findings filed by Golf, the issue remark appearing on the claim's preliminary decree abstract, and the recent filing from Golf regarding the historical priority date and flow rate for water right claim 41H 152501-00. Golf did not file additional information with the court.

The court's previous order stated: "Failure to comply with the terms of this order may result in modification of the claim to conform with information before the court. *See* Rule 22, W.R.Adj.R."

While Golf asserts the flow rate and priority date appearing on the claim's preliminary decree abstract are historically accurate, Golf failed to file additional information making sense of the contradictory information appearing in the claim's file. The court finds that the previous Water Master's findings of fact regarding the priority date and flow rate for water right claim 41H 152501-00 overcome the prima facie status afforded to the originally claimed elements. Thus, the Water Court corrects the priority date for water right claim 41H 152501-00 from April 30, 1864, to June 1, 1865, as well as the flow rate for water right claim 41H 152501-00 from 4.2 CFS to 1.25 CFS.

RECOMMENDATIONS

This Water Master recommends the Water Court to remove the resolved issue remarks, to modify the priority date for water right claim 41H 152501-00 from April 30, 1864, to **June 1, 1865**, to modify the flow rate for water right claim 41H 152501-00 from 4.2 CFS to **1.25 CFS**, and to modify the legal land description identifying Point of Diversion ID No. 2 associated with water right claim 41H 152501-00 as follows:

41H 152501-00

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
2		<u>NWSENE</u>	<u>SESWNW</u>	31	1S	6E	GALLATIN

The Water Court attaches post-decree abstracts of the water rights claims to this Master's Report to evidence the changes made.

Kirsa Shelkey
Water Master
she/her/hers

Service via USPS Mail:

Golf Course Partners Inc.
2710 McIlhattan Rd
Bozeman, MT 59715

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 152500-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GOLF COURSE PARTNERS INC
2710 MCILHATTAN RD
BOZEMAN, MT 59715

***Priority Date:** DECEMBER 31, 1872

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 2.50 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 260.00

Source Name: BRIDGER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWNW	32	1S	6E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

2		NESENW	31	1S	6E	GALLATIN
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Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO OCTOBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	120.00		NE	31	1S	6E	GALLATIN
2	70.00		E2NW	31	1S	6E	GALLATIN
3	70.00		N2SE	31	1S	6E	GALLATIN

Total: 260.00

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 152501-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GOLF COURSE PARTNERS INC
2710 MCILHATTAN RD
BOZEMAN, MT 59715

Priority Date: JUNE 1, 1865

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 1.25 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 260.00

Source Name: BRIDGER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESENW	31	1S	6E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

2		NWSENE	31	1S	6E	GALLATIN
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Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO OCTOBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	120.00		NE	31	1S	6E	GALLATIN
2	70.00		E2NW	31	1S	6E	GALLATIN
3	70.00		N2SE	31	1S	6E	GALLATIN

Total: 260.00