

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

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CLAIMANTS: 4-G Land Partnership LP; Jerome T. Light Jr. Trust	CASE 41H-1293-R-2021 41H 125503-00
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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 right claim 41H 125503-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with a point-of-diversion issue remark received during the Department of Natural Resources and Conservation's (DNRC) review in preparation of the preliminary decree. The Water Court resolves issue remarks in preparation for issuance of a final decree.

Therefore, the Water Court consolidated water right claim 41H 125503-00 into Water Court 41H-1293-R-2021 and asked the claim's owners to file information verifying the accuracy of the points of diversion as described on the claim's preliminary decree abstract. Jim Gibbon for 4-G Land Partnership LP contacted the Water Court by telephone to discuss the court's order. On November 19, 2021, Gibbon filed a response on behalf of 4-G Land Partnership LP.

The Water Court presently resolves the issue in this case.

ISSUES

1. Whether a preponderance of the evidence supports modifying the points of diversion associated with water right claim 41H 125503-00.

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 associated with water right claim 41H 125503-00.

Water right claim 41H 125503-00 is a flood-irrigation use right for surface water from an unnamed tributary of Reese Creek in Gallatin County. The issue remark appearing on the claim 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 claim's preliminary decree abstract indicates two points of diversion are associated with the water right: (1) a dike in the N2SWSW of Section 7, Township 1N, Range 6E, Gallatin County; and (2) a dike that is "moveable all along the source" in the S2S2 of Section 12, Township 1N, Range 5E, Gallatin County.

The response filed on behalf of 4-G Land Partnership LP verifies that the preliminary decree abstract accurately identifies the locations of the points of diversion. Accordingly, a preponderance of the evidence does not support modifications to the claim's points of diversion. The Water Court removes the resolved issue remark and decrees water right claim 41H 125503-00 as it appeared in the preliminary decree.

RECOMMENDATIONS

This Water Master recommends the Water Court to remove the resolved issue remark. A post-decree abstract of water right 41H 125503-00 accompanies this Master's Report.

Kirsa Shelkey
Water Master
she/her/hers

Service via USPS Mail:

4-G Land Partnership LP
% Jim Gibbon
PO Box 3808
Bozeman, MT 59772

Jerome T. Light Jr. Trust
Jerome T. Light Jr., Trustee
PO Box 158
Center Tuftonboro, NH 03816

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

Water Right Number: 41H 125503-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: 4-G LAND PARTNERSHIP LP
%JIM GIBBON
PO BOX 3808
BOZEMAN, MT 59772 3808

LIGHT, JEROME T JR TRUST
LIGHT, JEROME T JR TRUSTEE
PO BOX 158
CENTER TUFTONBORO, NH 03816 0158

Priority Date: NOVEMBER 20, 1883

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.00 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: 160.00

Source Name: UNNAMED TRIBUTARY OF REESE 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		N2SWSW	7	1N	6E	GALLATIN

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: DIKE

2		S2S2	12	1N	5E	GALLATIN
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Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: DIKE

POINT OF DIVERSION IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION.

Period of Use: MAY 1 TO SEPTEMBER 30

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	80.00		SW	7	1N	6E	GALLATIN
2	80.00		S2S2	12	1N	5E	GALLATIN

Total: 160.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

16830-00

16831-00

16832-00

16833-00

125503-00

125504-00