

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

\* \* \* \* \*

CLAIMANT: Story Hills West

OBJECTOR: City of Bozeman

NOTICE OF INTENT TO APPEAR: Story Hills West

**CASE 41H-0067-R-2021**  
41H 19220-00

**NOTICE OF FILING OF MASTER'S REPORT**

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

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within **10 days** of the date of the Master's Report. If this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this 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**

Claim 41H 19220-00 is a power generation claim owned by Story Hills West. This claim received an Objection from the City of Bozeman to the priority date of the water right.

### **FINDINGS OF FACT**

1. On June 3, 2021, the Parties filed a signed Stipulation.
2. The Parties agree that the elements of the Story Hills West claim abstract shall remain unchanged except for the priority date.

3. The Parties agree that abstract for claim 41H 19220-00 should include the following remark:

CLAIM 41H 19220-00 IS AND SHALL BE SUBORDINATED TO THE CITY'S CLAIMS 41H 140882-00 AND 41H 14883-00. 41H 19220-00 WILL REMAIN SUBORDINATE TO THE CITY'S LYMAN CREEK CLAIMS REGARDLESS OF WHETHER OR NOT THE CITY'S CLAIMS ARE MODIFIED IN ANY FASHION BY THE ADJUDICATION PROCEEDING.

4. On June 3, 2021, the City of Bozeman withdrew its Objection to claim 41H 19220-00.

### **CONCLUSIONS OF LAW**

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, 85-2-102(12), MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA.

3. Prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

4. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v.*

*Burkhartsmeyer et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master's Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as "a relatively modest standard that the statutory criteria are 'more probable than not' to have been met." *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

5. The Montana Water Court may accept a settlement agreement that reduces or limits an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

6. The Stipulation entered into the record is sufficient to include the forementioned remark on the claim abstract.

### **RECOMMENDATIONS**

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above for claim 41H 19220-00. Post Decree Abstract of Water Right Claim 41H 19220-00 is served with this Report to confirm the remark has been made in the State's centralized water right record system.

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Julia J. Nordlund  
Senior Water Master

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

**Water Right Number:** 41H 19220-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** STORY HILLS WEST  
%THOMAS H LANGE  
PO BOX 1008  
MANHATTAN, MT 59741 1008

**Priority Date:** SEPTEMBER 2, 1886

CLAIM 41H 19220-00 IS AND SHALL BE SUBORDINATED TO THE CITY'S CLAIMS 41H 140882-00 AND 41H 140883-00. 41H 19220-00 WILL REMAIN SUBORDINATE TO THE CITY'S LYMAN CREEK CLAIMS REGARDLESS OF WHETHER OR NOT THE CITY'S CLAIMS ARE MODIFIED IN ANY FASHION BY THE ADJUDICATION PROCESS.

**Type of Historical Right:** FILED

**Purpose (Use):** POWER GENERATION

**Flow Rate:** 12.50 CFS

**Volume:** 7,680.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

**Source Name:** LYMAN 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		NWNWSW	33	1S	6E	GALLATIN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** HEADGATE

**Period of Use:** JANUARY 1 TO DECEMBER 31

**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			SESESE	31	1S	6E	GALLATIN
2			SWSW	32	1S	6E	GALLATIN
3			NWNW	5	2S	6E	GALLATIN
4			NENENE	6	2S	6E	GALLATIN