

41H-0197-R-2021

July 26, 2021

Montana Water Court

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

* * * * *

CLAIMANT: Gene E. Cook

OBJECTOR: United States of America (USDA Forest Service)

CASE 41H-0197-R-2021
41H 154126-00

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 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 mail 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 154126-00, owned by Gene Cook, appeared in the Preliminary Decree for the Gallatin River (Basin 41H). The United States Forest Service objected to the claim's place of use.

The Water Court consolidated water right claim 41H 154126-00 into Water Court case 41H-0197-R-2021 and set a filing deadline for the parties to file information regarding the accurate historical place of use associated with the water right claim. The parties did not file information by the filing deadline.

Therefore, the Water Court presently resolves the issue in this case based on evidence in the record.

ISSUES

1. *Whether a preponderance of the evidence supports correcting the legal land descriptions identifying the places of use for water right claim 41H 154126-00.*

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.

After the Water Court issues a preliminary decree in a basin, an objection period provides parties with an ownership interest in water or its use the opportunity to raise issues regarding their own water rights or other water rights in the preliminary decree. Section 85-2-233(1)(b); *Mont. Trout Unlimited v. Beaverhead Water Co.*, 2011 MT 151, ¶ 33, 361 Mont. 77, 255 P.3d 179.

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 bears the burden of proof. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

The Water Court may correct a clerical mistake found in a judgment, order, or other part of the record on motion or on its own, with or without notice. Rule 60(a), M.R.Civ.P.

DISCUSSION

1. *Whether a preponderance of the evidence supports correcting the legal land descriptions identifying the places of use for water right claim 41H 154126-00.*

Water right claim 41H 154126-00 is a stock-use claim for groundwater direct from a spring in the SESENE of Section 29, Township 2S, Range 6E, Gallatin County, Montana. However, the claim's preliminary decree abstract indicates the places of use, where stock drink from the spring, are in Township 2N, not in Township 2S.

The USFS' objection to the claim's place of use states: "The places of use appear to have been erroneously claimed in T2N R6E, which is federal land in the National Forest System. They should be amended, potentially to T2S R6E, which removes them from federal land."

Because the spring from which stock drink is in Township 2S, a preponderance of the evidence supports the places of use are also in Township 2S. The court hereby corrects this error and modifies the places of use as follows:

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Tw</u> <u>p</u>	<u>R</u> <u>ge</u>	<u>County</u>
1			NENENE	29	<u>2S</u>	2N 6E	GALLATIN
2			SENENE	29	<u>2S</u>	2N 6E	GALLATIN
3			NESENE	29	<u>2S</u>	2N 6E	GALLATIN
4			SESENE	29	<u>2S</u>	2N 6E	GALLATIN

The corrections resolve the objection filed by USFS.

RECOMMENDATIONS

This Water Master recommends the Water Court to modify the water right claim's place of use as follows:

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Tw</u>	<u>Rge</u>	<u>County</u>
1			NENENE	29	<u>2S</u>	2N 6E	GALLATIN
2			SENENE	29	<u>2S</u>	2N 6E	GALLATIN
3			NESENE	29	<u>2S</u>	2N 6E	GALLATIN
4			SESENE	29	<u>2S</u>	2N 6E	GALLATIN

The Water Court attaches a post-decree abstract for water right claim 41H 154126-00 to reflect the corrections made.

Kirsa Shelkey
Water Master
she/her/hers

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 154126-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GENE E COOK
1276 N 15TH AVE STE 103
BOZEMAN, MT 59715

Priority Date: DECEMBER 31, 1944

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING

Source Type: GROUNDWATER

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		SESENE	29	2S	6E	GALLATIN

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: MARCH 1 TO NOVEMBER 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			NENENE	29	2S	6E	GALLATIN
2			SENENE	29	2S	6E	GALLATIN
3			NESENE	29	2S	6E	GALLATIN
4			SESENE	29	2S	6E	GALLATIN