

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

* * * * *

CLAIMANT: Home Ranch LLC

OBJECTOR: United States of America (USDA Forest Service)

CASE 41H-0201-R-2021
41H 36092-00

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 36092-00-00, owned by Home Ranch LLC, appeared in the Preliminary Decree for the Gallatin River (Basin 41H). On May 9, 2019, the United States

Forest Service (USFS) filed an objection to the place of use/maximum acres and point of diversion/means of diversion for water right claim 41H 36092-00.

The Water Court consolidated water right claim 41H 36092-00 into Water Court case 41H-0201-R-2021 and set a filing deadline for the parties to file a settlement agreement resolving the objection with the court. On July 8, 2021, the parties filed a Stipulation with the court resolving the issues.

The Water Court presently resolves the issue in this case.

ISSUES

1. *Whether the Water Court approves the stipulation filed by the parties and modifies the claim's place of use accordingly.*

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.

In Water Court proceedings, the parties may file settlements stipulating the terms under which the parties contractually agree to resolve decree objections. A settlement may

include a claimant's legally binding commitment to modify water right claims to resolve objections and issue remarks and an objector's agreement to withdraw objections conditioned upon the court's acceptance of the claim modifications. *E.g., In re Pondera Cty. Canal & Reservoir Co.*, Case 41M-202, 2020 Mont. Water LEXIS 19 (Jan. 9, 2020).

Settlement agreements do not bind the Water Court and are subject to the court's review and approval. Rule 17(a), W.R.Adj.R. The court may rely on the stipulated facts and agreements of a settlement that are "not contrary to law, court rule, or public policy." *In re Marriage of Hill*, 265 Mont. 52, 58, 874 P.2d 705, 708 (1994). When a stipulation proposes modifications to water right claim elements, the court must evaluate each proposed modification to ensure the modification is supported by the evidence and within the court's authority to adjudicate. *In re Argabright*, Case 41I-265, 2014 Mont. Water LEXIS 9, (December 12, 2014) (affirming rejection of stipulation); *In re Dana Ranch Co.*, Case 41J-265, 2017 Mont. Water LEXIS 13 (rejecting stipulation). The water right adjudication rules require settlement agreements enlarging an element of a water right to meet the applicable burden of proof. Rule 17(b), W.R.Adj.R. The rules do not require settlement agreements reducing an element of a water right to meet the applicable burden of proof. Rule 17(c), W.R.Adj.R.

DISCUSSION

1. *Whether the Water Court approves the stipulation filed by the parties and modifies the claim's place of use accordingly.*

Water right claim 41H 36092-00 is a stock-use claim for groundwater from a spring hydrologically related to an unnamed tributary of Rocky Canyon Creek in the SWNWSE of Section 16, Township 3N, Range 5E, Gallatin County, Montana. The claim's preliminary decree abstract indicates groundwater is piped to 8 associated places of use in Sections 27, 26, 21, 22, 23, 14, 15, and 16, Township 3N, Range 5E, Gallatin County.

The objection to the place of use/maximum acres and point of diversion/means of diversion for water right claim 41H 36092-00 filed by the USFS states:

Current aerial photos, the Statement of Claim and the topography of the area indicate the point of diversion and place of use need to be revised. There is no evidence of a pipeline conveying water up over 1000 feet of elevation to federal National Forest System lands in Sections 14, 15, and 23

(corresponding to places of use 5, 6, and 7). Places of use 5, 6, and 7 (and potentially others) should be removed from the claim.

The Stipulation and Agreement signed and filed by the parties indicates Places of Use ID Nos. 5, 6, and 7 should be removed from the decree abstract for water right claim 41H 36092-00.

Based on the court's review, the Stipulation is not contrary to law, court rule, or public policy. The Stipulation does not propose modifications enlarging any element of the water right claim. The Water Court approves the Stipulation filed by the parties and modifies the claim's place of use by removing Places of Use ID Nos. 5, 6, and 7 from the claim's post-decree abstract. The court's approval of the Stipulation resolves the objection filed in this case.

RECOMMENDATIONS

This Water Master recommends the Water Court to approve the Stipulation and to remove Places of Use ID Nos. 5, 6, and 7 from the post-decree abstract for water right claim 36092-00.

The Water Court attaches a post-decree abstract for the water right claim to this Master's Report, as well as the Stipulation filed by the parties.

Kirsa Shelkey
Water Master
she/her/hers

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Belgrade, MT 59714

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

Water Right Number: **41H 36092-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: HOME RANCH LLC
5400 PENWELL BRIDGE RD
BELGRADE, MT 59714

Priority Date: SEPTEMBER 1, 1924

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 26.90 GPM

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, UNNAMED TRIBUTARY OF ROCKY CANYON CREEK

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		SWNWSE	16	3N	5E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

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			N2	27	3N	5E	GALLATIN
2			N2	26	3N	5E	GALLATIN
3			NE	21	3N	5E	GALLATIN
4				22	3N	5E	GALLATIN
5				16	3N	5E	GALLATIN

41H-0201-R-2021

July 8, 2021

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Montana Water Court

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

CLAIMANT: Home Ranch LLC

CASE 41H-0201-R-2021
41H 36092-00

OBJECTOR: United States of America (USDA Forest
Service)

STIPULATION

This Stipulation, entered into by Objector United States of America, on behalf of the USDA Forest Service (“United States”) and Home Ranch LLC (“Claimant”) is for the purpose of resolving the United States’ objections as to Water Right Claim No. 41H 36092-00 (“Claim”). This Stipulation is entered into as of the last date accompanying the signatures below.

A. Pursuant to Mont. Code Ann. § 85-2-221, Claimant’s predecessor timely filed a Statement of Claim for the Claim with the Department of Natural Resources and Conservation (“DNRC”).

B. Pursuant to Mont. Code Ann. § 85-2-233, the United States timely filed a Notice of Objection to the Claim as it appears on the Preliminary Decree for Basin 41H.

C. Claim 41H 36092-00 is a use right for stock use from a spring (an unnamed tributary of Rocky Canyon Creek), with eight places of use identified in the Preliminary Decree. Certain of the identified places of use are inaccurate and should be removed from the claim.

D. In the interest of resolving this case without the need for further litigation, the parties have executed this Stipulation.

AGREEMENT

The parties stipulate as follows:

1. The place of use should be modified as follows (with changes reflected in **BOLD**):

Place of Use:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u> <u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		N2	27	3N	5E	Gallatin
2		N2	26	3N	5E	Gallatin
3		NE	21	3N	5E	Gallatin
4			22	3N	5E	Gallatin
5			23	3N	5E	Gallatin
6			14	3N	5E	Gallatin
7			15	3N	5E	Gallatin
5 8			16	3N	5E	Gallatin

A proposed abstract reflecting this change is attached hereto as Exhibit 1.

2. Upon entry of a ruling and final order in this case reflecting the amendment specified above, the United States' objections to the Claim shall be deemed resolved, provided that such order(s) do not expand or change other substantive elements of the claim.

3. This Stipulation is the compromise of disputed water claims and is not to be construed as an admission against the interests of any party.

4. The terms of this Stipulation are binding on the parties, their successors, and assigns. Nothing in this Stipulation shall create any right, claim, cause of action, objection, defense, or other remedy in any person not a party to the Stipulation.

5. Each party agrees to bear its own costs and attorney fees arising from the negotiation and execution of the Stipulation and in proceedings before the Montana Water Court.

6. Each undersigned party entered into and executed this Stipulation voluntarily, in good faith, and without any fraud, misunderstanding, misrepresentation, overreaching, duress, or undue influence, whatsoever.

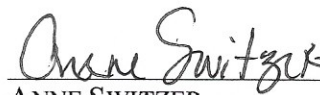
7. The parties hereto represent and affirm that the signatories to this Stipulation are legally authorized to bind the party to this matter.

8. This Stipulation may be executed by the parties in counterparts, each of which when executed and filed with the Montana Water Court shall be an original, but all of which together shall constitute one instrument.

9. The parties agree that this document (¶¶ 1-9) embodies the entire stipulation of the parties.

IT IS SO AGREED AND STIPULATED on the date last entered below.


Date: 7/7/2021



ANNE SWITZER
MANAGING MEMBER
HOME RANCH LLC

Date: July 8, 2021

JEAN E. WILLIAMS
ACTING ASSISTANT ATTORNEY GENERAL


ROMNEY S. PHILPOTT, TRIAL ATTORNEY
U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES
DIVISION
NATURAL RESOURCES SECTION

ATTORNEYS FOR UNITED STATES OF AMERICA

STATE OF MONTANA
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
1424 9TH AVENUE P.O.BOX 201601 HELENA, MONTANA 59620-1601

GENERAL ABSTRACT

Water Right Number:

41H 36092-00 STATEMENT OF CLAIM

Version:

2 -- REEXAMINED

Version Status:

ACTIVE

Owners:

HOME RANCH LLC
5400 PENWELL BRIDGE RD
BELGRADE, MT 59714

Priority Date:

SEPTEMBER 1, 1924

Enforceable Priority Date:

SEPTEMBER 1, 1924

Type of Historical Right:

USE

Purpose (use):

STOCK

Maximum Flow Rate:

26.90 GPM

Maximum Volume:

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Period of Diversion:

JANUARY 1 TO DECEMBER 31

Diversion Means:

PIPELINE

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JANUARY 1 to DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr	Sec	Sec	Twp	Rge	County
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5				23		3N	5E	GALLATIN
6				14		3N	5E	GALLATIN
7				15		3N	5E	GALLATIN
8 5				16		3N	5E	GALLATIN

Geocodes/Valid:

06-1211-14-1-01-01-0000 - Y

06-1211-15-1-01-01-0000 - Y

06-1211-16-3-01-01-0000 - Y

06-1211-21-1-01-01-0000 - Y

06-1211-22-1-01-01-0000 - Y

06-1211-22-2-01-01-0000 - Y

06-1211-22-3-01-01-0000 - Y

06-1211-23-1-01-01-0000 - Y

06-1211-27-1-01-01-0000 - Y

Remarks:

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

NOTICE OF WATER RIGHT TRANSFER RECEIVED 10/28/88.

OWNERSHIP UPDATE RECEIVED

OWNERSHIP UPDATE TYPE DOR # 155095 RECEIVED 01/31/2017.