

July 20, 2021

Montana Water Court

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

CLAIMANT: Jeff Kack

LATE OBJECTOR: James W. Kack

CASE: 41H-0695-R-2021

41H 30577-00

41H 30580-00

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. Because 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

FINDINGS OF FACT

1. Claims 41H 30577-00 and 41H 30580-00 are currently owned by Jeff Kack.
2. Claims 41H 30577-00 and 41H 30580-00 were decreed with DNRC issue remarks indicating that Late Objections were filed after the close of the objection period during the Temporary Preliminary Decree. Both Late Objections were filed by then-Claimant James W. Kack.
3. The Late Objection to claim 41H 30577-00 was filed on October 16, 1989 and stated:

I, James W. Kack, of 6531 Jackson Creek Road, Bozeman, MT, have read the report dated December 2, 1988 prepared by Rusty Taylor of the Bozeman DNRC field office, to the Montana Water Court, regarding my water rights claims #41H-W030576, W030577, and W030578.

1. My original claims were in error due to my mis-understanding of the filing procedure. My meeting with Rusty Taylor on November 30, 1988, resulted in the corrections reflected in his December 2, 1988 report, and I concur with his findings as follows:

...

3. #W030577

Priority Date: Sept. 1, 1888 (Filed Appropriation Right by C.D. Pease for 20 M.I.)

Source: Spring. Tributary of Spring Creek

<u>Acres</u>	<u>Location</u>
12.0	SW SW Sec. 21 T01S R07E
2.0	E2 SE SE Sec. 20 T01S R07E

14.0 Total Acres - Supplemental remark should reflect 94.0 Acres

4. The Late Objection to claim 41H 30580-00 was filed on November 17, 1988 and stated:

REQUEST TO AMEND STATEMENT OF CLAIM

I, James W. Kack hereby request the following amendment(s) to Statement of Claim number 41H-W- 030580-00 :

Place of Domestic Use for said claimed Spring should read:

SW SW SW Sec. 21 Twsp. 01S Rge. 07E Gallatin County

...

The amendments are requested for the following reasons:

My original filing shows the place of use as SE SE SE of Sec. 20. : This erroneous location was picked up by my referencing the Bozeman Pass Quadrangle where the original homestead shows in that SE SE SE Sec. 20 location. Sometime during the 1950's however, this homestead was razed, and a new (current) home was built just to the east, placing it in the SW SW SW of Sec. 21, utilizing this same spring for its domestic supply.

5. Based on the Late Objections, it appears the following changes should be made to the claims:

Claim 41H 30577-00:

Priority Date:

APRIL 11, 1885

SEPTEMBER 1, 1888

Flow Rate:

480.00 GPM

224.40 GPM

Maximum Acres:

20.00

14.00

Source Name:

SPRING CREEK

UNNAMED TRIBUTARY, SPRING CREEK

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	20.00	12.00	SWSW	21	1S	7E	GALLATIN
Total:	20.00	2.00	E2SESE	20	1S	7E	GALLATIN

- This Master routinely removes supplemental rights remarks from claims.

Claim 41H 30580-00:

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	2.00	SWSWSW	SESESE	21	20	1S	7E GALLATIN
Total:	2.00						

6. To determine if the parties agree the above changes resolve the Late Objections and to determine if Claimant Jeff Kack agrees with the proposed changes, an Order Setting Filing Deadline was issued. The Order set a deadline for Claimant Jeff Kack and Late Objector James W. Kack to file statements agreeing or disagreeing with the proposed changes. The Order indicating that if nothing was filed by the deadline, this Master would conclude Claimant Jeff Kack and Late Objector James W. Kack agree the proposed changes should be made to claims 41H 30577-00 and 41H 30580-00 and a Master's Report would be issued recommending the change. The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

7. Nothing was filed by the deadline.

CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, 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. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

RECOMMENDATIONS

1. Claims 41H 30577-00 and 41H 30580-00 should be changed as shown in Finding of Fact No. 5.

2. The Late Objection should be dismissed as it has been addressed.

3. The issue remarks should be removed from claims 41H 30577-00 and 41H 30580-00.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended changes have been made in the DNRC's water rights database.

Anika M. Stern
Senior Water Master

Service via USPS Mail:

James W. Kack
958 Knolls Drive
Bozeman, MT 59715

Jeff Kack
6529 Jackson Creek Rd
Bozeman, MT 59715

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

Water Right Number: 41H 30577-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JEFF KACK
6529 JACKSON CREEK RD
BOZEMAN, MT 59715

Priority Date: SEPTEMBER 1, 1888

Type of Historical Right: FILED

Purpose (Use): IRRIGATION
Irrigation Type: SPRINKLER

Flow Rate: 224.40 GPM

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: 14.00

Source Name: UNNAMED TRIBUTARY OF SPRING 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		SWSW	21	1S	7E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: PUMP

Period of Use: MAY 1 TO OCTOBER 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	12.00		SWSW	21	1S	7E	GALLATIN
2	2.00		E2SESE	20	1S	7E	GALLATIN

Total: 14.00

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

30575-00 30577-00 30578-00 30579-00

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

Water Right Number: **41H 30580-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JEFF KACK
6529 JACKSON CREEK RD
BOZEMAN, MT 59715

Priority Date: SEPTEMBER 1, 1888

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 25.00 GPM

Volume: 2.00 AC-FT

Households: 1

Maximum Acres: 2.00

Source Name: SPRING, UNNAMED TRIBUTARY OF SPRING 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		NWNWNW	28	1S	7E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP/GRAVITY FLOW

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	2.00		SWSWSW	21	1S	7E	GALLATIN

Total: 2.00