

41H-0755-R-2021

July 7, 2021

Montana Water Court

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

* * * * *

CLAIMANT: MT Pockets in Montana

CASE 41H-0755-R-2021

41H 42460-00

41H 42461-00

41H 99657-00

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 rights claims 41H 42460-00, 41H 42461-00, and 41H 99657-00, owned by MT Pockets in Montana, appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with issue remarks received during the Department of Natural Resources and

Conservation's (DNRC) review in preparation of the preliminary decree. Specifically, water right claim 41H 99657-00 received a point-of-diversion issue remark requiring resolution.

The Water Court consolidated the water rights claims into Water Court case 41H-0755-R-2021 and set a filing deadline for the claim's owner to file information verifying the location of the claimed point of diversion for water right claim 41H 99657-00. On June 17, 2021, MT Pockets in Montana through counsel Ryan Mattick filed evidentiary information with the court.

The Water Court presently resolves the issues.

ISSUES

1. *Whether a preponderance of the evidence supports modifying the point of diversion/means of diversion for water right claim 41H 99567-00.*
2. *Whether the Water Court corrects the source type for multiple-use water rights claims 41H 42460-00 and 41H 42461-00 from groundwater to surface water.*

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.

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 modifying the point of diversion/means of diversion for water right claim 41H 99567-00.

Water right claim 41H 99567-00 is a flood-irrigation use claim for surface water from Bridger Creek in Gallatin County, Montana. The preliminary decree abstract indicates the claim's point of diversion is a "PUMP/FLOOD AND DIKE" in the SENWNW of Section 31, Township 1S, Range 7E, Gallatin County. An issue remark appearing on the preliminary decree abstract for water right claim 41H 99657-00 states: "THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE."

The information filed by the claim's owner indicates the accurate historical legal land description for the pump site is the SWNENW of Section 31, Township 1S, Range 7E, Gallatin County. In support of this assertion, the claim's owner attaches a map depicting the pump site on the source.

A preponderance of the evidence supports the claim's point of diversion is in the SWNENW of Section 31, Township 1S, Range 7E, Gallatin County. The Water Court modifies the claim's point of diversion accordingly.

2. Whether the Water Court corrects the source type for multiple-use water rights claims 41H 42460-00 and 41H 42461-00 from groundwater to surface water.

The Water Court takes the opportunity to correct the "source type" for multiple-use water rights 41H 42460-00 and 1H 42461-00 from groundwater to surface water from a spring hydrologically related to an unnamed tributary of Bridger Creek. The means of diversion for the water rights claims are "flowing" and "livestock direct from source." Groundwater by definition is "any water under the surface of the land . . . ," thereby meaning the water rights as claimed are not groundwater, but surface water from the spring. *See* Rule 2(a)(28), W.R.C.E.R. The evidentiary filing from MT Pockets in Montana further indicates: "The source is from an undeveloped spring, which should be changed and classified as surface water by Rule 2(a)(64)(ii), W.R.C.E.R."

Water right claim 41H 42461-00 is a domestic use claim for "flowing" groundwater in Gallatin County, Montana. The preliminary decree abstract indicates the claim's point

of diversion is in the SWNWNW of Section 31, Township 1S, Range 7E, Gallatin County.

RECOMMENDATIONS

This Water Master recommends the Water Court to remove the resolved issue remarks, to modify the legal land description identifying the point of diversion associated with water right claim 41H 99657-00 from the SENWNW to the **SWNENW** of Section 31, Township 1S, Range 7E, Gallatin County, and to modify the source type for water rights claims 41H 42460-00 and 41H 42461-00 from GROUNDWATER to **SURFACE WATER**. The Water Court attaches post-decree abstracts of the water rights claims to this Master's Report to evidence the changes 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 42460-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MT POCKETS IN MONTANA
301 N INTERLACHEN AVE
WINTER PARK, FL 32789

Priority Date: DECEMBER 31, 1952

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, UNNAMED TRIBUTARY OF BRIDGER 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		SWNWNW	31	1S	7E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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			NWNW	31	1S	7E	GALLATIN

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.

42460-00 42461-00

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

Water Right Number: 41H 42461-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MT POCKETS IN MONTANA
301 N INTERLACHEN AVE
WINTER PARK, FL 32789

Priority Date: DECEMBER 31, 1952
Type of Historical Right: USE
Purpose (Use): DOMESTIC
Flow Rate: 6.00 GPM
Volume: 1.50 AC-FT
Households: 1
Maximum Acres: 1.00
Source Name: SPRING, UNNAMED TRIBUTARY OF BRIDGER 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		SWNWNW	31	1S	7E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

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	1.00		NWNW	31	1S	7E	GALLATIN

Total: 1.00

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.

42460-00 42461-00

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

Water Right Number: 41H 99657-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MT POCKETS IN MONTANA
301 N INTERLACHEN AVE
WINTER PARK, FL 32789

Priority Date: DECEMBER 31, 1889

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.75 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: 114.00

Source Name: BRIDGER 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		SWNENW	31	1S	7E	GALLATIN

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: PUMP/FLOOD AND DIKE

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	7.00		NWNWNW	31	1S	7E	GALLATIN
2	10.00		NENWNW	31	1S	7E	GALLATIN
3	5.00		NWNENW	31	1S	7E	GALLATIN
4	10.00		NENENW	31	1S	7E	GALLATIN
5	5.00		SENWNW	31	1S	7E	GALLATIN
6	8.00		SWNENW	31	1S	7E	GALLATIN
7	64.00		S2NW	31	1S	7E	GALLATIN
8	5.00		N2NWSW	31	1S	7E	GALLATIN

Total: 114.00

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.

99650-00 99652-00 99653-00 99654-00 99655-00 99657-00

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.

99642-00 99657-00