

41H-0756-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

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CLAIMANT: Oakwood Properties LLC

**CASE 41H-0756-R-2021**

41H 9018-00

41H 29052-00

**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 9018-00 and 41H 29052-00, owned by Oakwood Properties LLC, 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, issue remarks appearing on water right claim 41H 9018-00 states:

THE CURRENT USE OF RIGHT IS QUESTIONABLE. PLACE OF USE IS HIGHLY SUBDIVIDED PER GALLATIN COUNTY RECORDS.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

The Water Court consolidated the water right claims into Water Court case 41H-0756-R-2021 and set a filing deadline for the claim's owner to file information with the court verifying the use and existence of the claimed point of diversion—the headgate on Bridger Creek. The court did not receive information from the Oakwood Properties LLC.

The Water Court presently resolves the issue in this case.

### ISSUES

1. *Whether a preponderance of the evidence supports modifying the point of diversion/means of diversion for water right claim 41H 9018-00.*

### 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.

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.

## DISCUSSION

*1. Whether a preponderance of the evidence supports modifying the point of diversion/means of diversion for water right claim 41H 9018-00.*

The preliminary decree abstract for water right claim 41H 9018-00 indicates the claim is a filed flood-irrigation claim for surface water diverted from Bridger Creek by a headgate in the NWNESE of Section 32, Township 1S, Range 6E, Gallatin County, Montana.

DNRC previously verified the legal land description identifying the point of diversion. Despite DNRC's recent addition of the point-of-diversion issue remark, the court concludes a preponderance of the evidence does not overcome the prima facie status afforded to the claim's originally claimed point of diversion. DNRC did not indicate which resources it reviewed or its reasoning for adding the issue remark to the claim's preliminary decree abstract. The legal land description for the point of diversion will therefore remain as it appears on the preliminary decree abstract as claimed; the point-of-diversion issue remark is resolved and shall be removed.

Water right claim 41H 29052-00 received an issue remark providing notice DNRC modified elements of the claim during reexamination of the basin. The issue remark states if no objections are filed to the claim, the remark will be removed. The claim did not receive objections, no proceedings are required, and the issue remark shall be removed.

Furthermore, ownership will not be updated at this time. The claim's owner can update ownership by contacting Bozeman's DNRC office if necessary.

## RECOMMENDATIONS

This Water Master recommends the Water Court to remove the issue remarks. The Water Court attaches post-decree abstracts of the water rights claims to this Master's Report to evidence the changes made.

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Kirsa Shelkey  
Water Master  
*she/her/hers*

**Service via USPS Mail:**

Oakwood Properties LLC  
2000 Overland Ave  
Billings, MT 59102

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

**Water Right Number:** 41H 9018-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** OAKWOOD PROPERTIES LLC  
2000 OVERLAND AVE  
BILLINGS, MT 59102 6453

**Priority Date:** APRIL 1, 1882

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 336.60 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:** 28.00

**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		NWNESE	32	1S	6E	GALLATIN

**Period of Diversion:** MAY 1 TO AUGUST 31

**Diversion Means:** HEADGATE

**Period of Use:** MAY 1 TO AUGUST 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	28.00		NESE	32	1S	6E	GALLATIN

**Total:** 28.00

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**Remarks:**

FILE REFLECTS AUTHORIZATION TO CHANGE POINT OF DIVERSION COMPLETED 07/28/1986.

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

**Water Right Number:** 41H 29052-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** OAKWOOD PROPERTIES LLC  
2000 OVERLAND AVE  
BILLINGS, MT 59102 6453

**Priority Date:** JUNE 30, 1864

**Type of Historical Right:** DECREEED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 3.75 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:** 230.25

**Source Name:** EAST GALLATIN RIVER

**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		NENSW	10	1S	5E	GALLATIN

**Period of Diversion:** MAY 1 TO OCTOBER 31

**Diversion Means:** HEADGATE

**Ditch Name:** PENWELL DITCH

**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	80.00		N2NE	32	1N	5E	GALLATIN
2	40.00		NWNW	33	1N	5E	GALLATIN
3	73.50		S2SE	29	1N	5E	GALLATIN
4	36.75		SWSW	28	1N	5E	GALLATIN

**Total:** 230.25