

Montana Water Court  
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41H-0788-R-2021

July 8, 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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CLAIMANTS: Dell. E. Reistad; Garth K. Reistad

**CASE 41H-0788-R-2021**  
 41H 148479-00

**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 148479-00, owned by Dell and Garth Reistad, appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with an issue remark implicating the claim's point of diversion and means of diversion. Department of Natural Resources and Conservation's (DNRC) added the issue remarks during its review in preparation of the preliminary decree.

The Water Court consolidated water right claim 41H 148479-00 into Water Court case 41H-0788-R-2021 and set a filing deadline for the Reistads to file information with the court. The court did not receive information from the Reistads by the deadline.

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 148479-00.*

### 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 148479-00.*

The preliminary decree abstract for water right claim 41H 148479-00 indicates the claim is a decreed stock claim for surface water direct from the West Gallatin River in the NW of Section 9, Township 1S, Range 4E, Gallatin County, Montana.

An issue remark appearing on water right claim states:

INFORMATION IN THE CLAIM FILE SUGGESTS THE POINT OF DIVERSION IS INCORRECT. THIS IS WEST GALLATIN WATER BEING DELIVERED TO THE PLACE OF USE BY BAKER CREEK. THE POINT OF DIVERSION SHOULD BE SESESW SEC. 9 1S 4E GALLATIN

COUNTY, AT THE LOCATION OF THE HEADGATE WHERE BAKER CREEK BEGINS. THE MEANS OF DIVERSION SHOULD BE HEADGATE FOR THIS STOCK WATER CLAIM.

The Water Court's previous order to the Reistads stated: **"If the Water Court does not receive information from the Reistads by the deadline, it will modify the claim's point of diversion and means of diversion consistent with DNRC's issue remark."** The court did not receive additional information by the deadline.

While the original statement of claim and preliminary decree abstract reflect consistent information as claimed, DNRC's issue remark is specific. The claim's source is the West Gallatin River. The issue remark indicates DNRC reviewed the claim and identified a headgate diverting water from the source into Baker Creek, which is also noted on the claim's original statement of claim. DNRC further identified the legal land description for the headgate is the SESESW of Section 9, Township 1S, Range 4E, Gallatin County. A preponderance of the evidence supports modifying the claim's point of diversion and means of diversion consistent with DNRC's recommendations in its issue remark.

#### RECOMMENDATIONS

This Water Master recommends the Water Court to remove the resolved issue remark, to change the claim's means of diversion from LIVESTOCK DIRECT FROM SOURCE to **HEADGATE**, and to modify the legal land description identifying the claim's point of diversion from the NW of Section 9 to the **SESESW** of Section 9, Township 1S, Range 4E, Gallatin County. The Water Court attaches a post-decree abstract of the water right claim 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:**

Dell E. Reistad  
Garth K. Reistad  
3040 Amsterdam Rd  
Belgrade, MT 59714

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

**Water Right Number:** 41H 148479-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** DELL E REISTAD  
3040 AMSTERDAM RD  
BELGRADE, MT 59714  
  
GARTH K REISTAD  
3040 AMSTERDAM RD  
BELGRADE, MT 59714

**Priority Date:** APRIL 1, 1867  
**Type of Historical Right:** DECREED  
**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:** WEST 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		SESESW	9	1S	4E	GALLATIN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31  
**Diversion Means:** HEADGATE

**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			NW	9	1S	4E	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.

148478-00      148479-00