

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

* * * * *

CLAIMANTS: John W. Bailey Jr.; Marion A. Bailey

CASE 41H-0935-R-2021

41H 30115319

41H 30115320

41H 30115321

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 30115319, 41H 30115320, and 41H 30115321, owned by Marion and John Bailey, 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. The Water Court resolves issue remarks in preparation for issuance of a final decree.

Specifically, an issue remark on water right claim 41H 30115321 states: "THE DOCUMENTATION TO SUPPORT TYPE OF RIGHT AND PRIORITY DATE IS NOT FOUND IN THE GALLATIN CO. GROUNDWATER FILING RECORDS."

The Water Court consolidated the water rights claims into Water Court case 41H-0935-R-2021 and set a filing deadline for the Baileys to file information evidencing whether the water right claim was filed with the courthouse. The Baileys did not file information with the court.

The Water Court presently resolves the issue in this case.

ISSUE

1. *Whether the priority date for water right claim 41H 30115321 is June 30, 2017.*

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 the priority date for water right claim 41H 30115321 is June 30, 2017.*

Water right claim 41H 30115321 is a previously exempt water right claim for groundwater from a well in Gallatin County, Montana. The statement of claim was filed with DNRC on June 30, 2017. While the Groundwater form attached to the statement of claim indicates the claim's priority date is October 9, 1972, DNRC's examination worksheet indicates "the submitted GW form was not recorded with Gallatin Co."

Prior to the Montana Legislature's enactment of the Montana Water Use Act, the 1961 Montana Groundwater Code required groundwater well appropriators to file a notice of completion with the appropriate county clerk and recorder. The 1961 Groundwater Code applied to original appropriations made from January 1, 1962, to July 1, 1973. Pursuant to the 1961 Groundwater Code, the priority date was the date of filing of the notice of completion with the appropriate county clerk and recorder. However, to address filing irregularities between counties, the Montana Legislature enacted § 85-2-306(4), MCA, which states:

An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(emphasis added). Section 85-2-306(3)(c), MCA, states: "A certificate of water right may not be issued until a correct and complete notice has been filed with the department . . . The date of filing of the notice of completion is the date of priority of the right."

A plain reading of the statutory language indicates the priority date for groundwater from wells appropriated between January 1, 1962, and July 1, 1973, is the date the notice of completion was filed with the clerk and county recorder pursuant to the 1961 Groundwater Code, the date the notice of completion was filed with DNRC pursuant to §

85-2-306(3) and (4), MCA, or the date of the filing of the Statement of Claim for Existing Water Rights pursuant to §§ 85-2-221, -306(4), MCA.

Here, the Statement of Claim for Existing Water Right was filed with DNRC on June 30, 2017. The Notice of Completion of Groundwater Appropriation by Means of Well attached to the Statement of Claim indicates the well was completed on October 9, 1972. However, there is no evidence in the record that the notice of completion was filed with the county clerk and recorder's office.

Per statute, the priority date for the water right claim is June 30, 2017, despite the claimed first dates of use appearing on the notice of completion and statement of claim. The court's previous order stated: "Unless the Baileys can show the water right claim was filed with the courthouse, the priority date will remain June 30, 2017." Pursuant to §§ 85-2-221, -306(4), MCA, the priority date for water right claim 41H 30115321 is June 30, 2017—the date the statement of claim was filed with DNRC.

Additionally, the water rights claims consolidated into this case received similar issue remarks providing notice that the previously exempt claims did not appear in the September 26, 1985 temporary preliminary decree for Basin 41H. The water rights claims appeared in the October 11, 2018 preliminary decree for Basin 41H with the exempt-claim issue remarks. Thus, the exempt-claim issue remarks have served their notice purposes and are hereby removed.

RECOMMENDATIONS

This Water Master recommends the Water Court to remove the resolved issue remarks. The Water Court attaches post-decree abstracts to reflect the changes made.

Kirsa Shelkey
Water Master
she/her/hers

Service via USPS Mail:

John W. Bailey Jr.
Marion A. Bailey
101 Paradise Vista Rd
Bozeman, MT 59715

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

Water Right Number: **41H 30115319** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: JOHN W BAILEY JR
 101 PARADISE VISTA RD
 BOZEMAN, MT 59715 2420

MARION A BAILEY
101 PARADISE VISTA RD
BOZEMAN, MT 59715 2420

Priority Date: DECEMBER 31, 1960

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 5.00 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: GROUNDWATER

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		SESENE	6	2S	6E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: WELL

Subdivision: PARADISE VISTA THIRD SUB TRACT/LOT: 10

Period of Use: APRIL 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			SESENE	6	2S	6E	GALLATIN

Water Right Number: 41H 30115320 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Priority Date:	SEPTEMBER 30, 1948
Type of Historical Right:	FILED
Purpose (Use):	DOMESTIC
Flow Rate:	5.00 GPM
Volume:	1.50 AC-FT
Households:	1
Source Name:	GROUNDWATER
Source Type:	GROUNDWATER

Subdivision: PARADISE VISTA THIRD SUB TRACT/LOT: 10

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

Water Right Number: **41H 30115321** STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: JOHN W BAILEY JR
 101 PARADISE VISTA RD
 BOZEMAN, MT 59715 2420

 MARION A BAILEY
 101 PARADISE VISTA RD
 BOZEMAN, MT 59715 2420

Priority Date: JUNE 30, 2017

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 35.00 GPM

Volume: 3.38 AC-FT

Households: 1

Maximum Acres: 0.75

Source Name: GROUNDWATER

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		SESENE	6	2S	6E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Subdivision: PARADISE VISTA THIRD SUB TRACT/LOT: 10

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	0.75		SESENE	6	2S	6E	GALLATIN
Total:	0.75						