

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

\* \* \* \* \*

CLAIMANT: Sievert Family Trust

**CASE 41H-1146-R-2021**  
41H 16793-00

**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 16793-00, owned by Sievert Family Trust, appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with a place-of-use issue remark received during the Department of Natural Resources and Conservation's (DNRC) review in preparation of the preliminary decree. The issue remark states: "PLACE OF USE

APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE SESENW SEC 27 TWP 2S RGE 6E GALLATIN COUNTY.”

The Water Court consolidated the claims into Water Court case 41H-1146-R-2021 and set a filing deadline for the claim’s owner to verify the well’s location. On April 12, 2021, the court spoke informally with Debbie Kapphan over the phone. Debbie’s parents own the usufruct interest in the water right. Debbie expressed an interest in working with DNRC to create a map and ensure the accuracy of the legal land description identifying the well.

Kapphan contacted DNRC and on July 1, 2021, DNRC filed a Memorandum and map (DNRC Memo) with the Water Court. The Water Court presently resolves the issue in this case.

### ISSUES

1. *Whether a preponderance of the evidence supports modifying the legal land description identifying the claim’s place of use consistent with the legal land description identifying the location of the well associated with water right claim 41H 16793-00.*

### 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 legal land description identifying the claim's place of use consistent with the legal land description identifying the location of the well associated with water right claim 41H 16793-00.*

Water right claim 41H 16793-00 is a domestic use right for groundwater from a well in Gallatin County, Montana. The preliminary decree abstract indicates the claim's point of diversion is in the SESENW of Section 27, Township 2S, Range 4E, Gallatin County, Montana, and the claim's place of use is in the SWSWNW of Section 27. Because both the point of diversion and place of use refer to the location of the well, the legal land descriptions should appear consistent between the two elements. DNRC had authority to modify the legal land description for the claim's point of diversion during its review, but did not have authority to modify the legal land description for the claim's place of use.

The DNRC Memo states:

DNRC assisted Ms. Kapphan's interpretation of the Legal Land Description listed in the Place of Use remark and she was able to verify that the Place of Use for this Well matches the Point of Diversion and is located in the SESENW of Section 27, Township 2 South, Range 6 East, in Gallatin County, Montana. DNRC believes this verification resolves the issue remark above, which may be removed from the claim abstract.

A preponderance of the evidence supports modifying the legal land description for the claim's place of use to reflect the well's location in the SESENW of Section 27, Township 2S, Range 6E, Gallatin County.

The water right claim additionally 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 is hereby removed.

### RECOMMENDATIONS

This Water Master recommends the Water Court to remove the resolved issue remarks and to modify the legal land description for the claim's place of use from the

SWSWNW of Section 27, Township 2S, Range 4E, Gallatin County to the **SESENW** of Section 27.

The Water Court attaches a post-decree abstract of the water right claim to this Master's Report to evidence the changes made, as well as the map attached to the DNRC Memo for future reference.

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Kirsa Shelkey  
Water Master  
*she/her/hers*

**Service via USPS Mail:**

Sievert Family Trust  
% Debbie Kapphan  
240 E Boulder Rd  
McLeod, MT 59052



Point of Diversion, claim 41H 16793-00



7/1/2021, 4:34:43 PM

Points

- Override 1
- Override 2
- DNRC Basins
- Parcels

PLSS Second Division

- Aliquot Part
- Remainder Aliquot Part
- Government Lot

PLSS First Division

- Unnumbered Lot
- Section
- Protracted Block

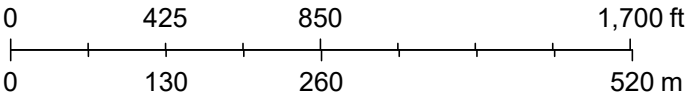
PLSS Township

- PLSS Township
- PLSS Meandered Water
- PLSS Special Survey
- PLSS Point

2017 Aerial Photos

- Red: Band\_1
- Green: Band\_2
- Blue: Band\_3

1:9,028



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community, Montana Department of Natural Resources and Conservation

Web AppBuilder for ArcGIS

c/private partnership including the U.S. Bureau of Land Management, several state agencies, local governments, The Montana Power Company, Montana/Dakota Utilities, and Burlington Northern Sante Fe Railroad. Most data are being maintained by staff of the Montana Department of Revenue (DOR). | Montana State Library |



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

**Water Right Number:**      **41H 16793-00**      STATEMENT OF CLAIM  
**Version:**                3 -- POST DECREE  
**Status:**                ACTIVE

**Owners:**                SIEVERT FAMILY TRUST  
                              % DEBBIE KAPPAN  
                              240 E BOULDER RD  
                              MC LEOD, MT 59052

**Priority Date:**                DECEMBER 31, 1901

**Type of Historical Right:**      USE

**Purpose (Use):**                DOMESTIC

**Flow Rate:**                20.00 GPM

**Volume:**                2.00 AC-FT

**Households:**                1

**Maximum Acres:**                1.00

**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		SESENW	27	2S	6E	GALLATIN

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

**Diversion Means:**                WELL

**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		SESENW	27	2S	6E	GALLATIN

**Total:**                        1.00