

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
(406) 586-4364  
1-800-624-3270  
[watercourt@mt.gov](mailto:watercourt@mt.gov)

ELECTRONICALLY FILED

41H-0083-R-2021

September 7, 2021

Montana Water Court

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

\*\*\*\*\*

CLAIMANTS: Allen D Pruitt; Patricia Pruitt

OBJECTOR: City of Bozeman

NOTICE OF INTENT TO APPEAR: Four Corners County  
Water & Sewer District

CASE 41H-0083-R-2021  
41H 46115-00

**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 if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within **10 days** of the date of the Master's Report. If this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

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 this 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**

The claim in this case appeared in the Preliminary Decree for Basin 41H with a Montana Department of Natural Resources and Conservation (DNRC) issue remark, an objection from City of Bozeman, and a Notice of Intent to Appear from Four Corners County Water and Sewer District (Four Corners).

### **FINDINGS OF FACT**

1. Claim 41H 46115-00 received a DNRC issue remark stating that the priority date is questionable because the claim is for a filed right predating a historical decree on the West Gallatin River—Case No. 3850.

2. On May 7, 2021, City of Bozeman and Claimant Riverside Country Club submitted a Stipulation wherein the parties agreed to a subordination agreement and information remark on the claim. The Stipulation subordinates claim 41H 46115-00 to claims 41H 138898-00, 41H 138899-00, 41H 138902-00, 41H 138903-00, 41H 30023118, 41H 30023119, and 41H 30023120.

3. On June 23, 2021, Four Corners and Claimant Pruitt filed a similar Stipulation where the parties agreed to also subordinate claim 41H 46115-00 to claims 41H 12221-00, 41H 12232-00, 41H 126909-00, 41H 126910-00.

4. These subordination agreements are combined into the following information remark:

PURSUANT TO TWO STIPULATIONS FILED IN CASE 41H-0083-R-2021, THIS WATER RIGHT SHALL BE SUBORDINATE IN PRIORITY TO THE FOLLOWING WATER RIGHTS: 41H 138898-00, 41H 138899-00, 41H 138902-00, 41H 138903-00, 41H 30023118, 41H 30023119, 41H 30023120, 41H 12221-00, 41H 12232-00, 41H 126909-00, 41H 126910-00.

5. The information provided resolves all issue remarks in this case.

## CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v. Burkhartsmeier et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master's Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as "a relatively modest standard that the statutory criteria are 'more probable than not' to have been met." *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

3. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

4. The issues raised by issue remarks must be resolved as part of the adjudication process pursuant to Section 85-2-248, MCA.

5. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

6. If a claimant agrees to reduce or limit an element of a claim, the Water Court does not need to determine whether the burden of proof has been met. The Water Court may accept a claimant's requested reduction or limitation without further presentation of evidence. Rule 17(c) W.R.Adj.R.

7. The evidence entered into the record is sufficient to resolve the issue remarks on this claim and support making the corrections outlined above.

## RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above to correct the Preliminary Decree for this Basin.

A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended corrections have been made in the state's centralized record system.

---

Julia J. Nordlund  
Senior Water Master

### **Service via USPS Mail:**

Susan B. Swimley  
Attorney and Counselor at Law  
1807 W Dickerson Unit B  
Bozeman, MT 59715

Allen D. Pruitt  
Patricia Pruitt  
28289 Norris Rd  
Bozeman, MT 59715

### **Service via Electronic Mail:**

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

**Water Right Number:** 41H 46115-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** ALLEN D PRUITT  
28289 NORRIS RD  
BOZEMAN, MT 59715  
  
PATRICIA PRUITT  
28289 NORRIS RD  
BOZEMAN, MT 59715

**Priority Date:** MAY 1, 1886

PURSUANT TO TWO STIPULATIONS FILED IN CASE 41H-0083-R-2021, THIS WATER RIGHT SHALL BE SUBORDINATE IN PRIORITY TO THE FOLLOWING WATER RIGHTS: 41H 138898-00, 41H 138899-00, 41H 138902-00, 41H 138903-00, 41H 30023118, 41H 30023119, 41H 30023120, 41H 12221-00, 41H 12232-00, 41H 126909-00, 41H 126910-00

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.40 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:** 37.00

**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		NWSWSE	14	2S	4E	GALLATIN

**Period of Diversion:** MAY 1 TO JULY 10

**Diversion Means:** HEADGATE

**Ditch Name:** BECK AND BORDER DITCH

**Period of Use:** MAY 1 TO JULY 10

**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	37.00		S2SW	11	2S	4E	GALLATIN

**Total:** 37.00

41H-0083-R-2021

May 7, 2021

Montana Water Court

PETER G. SCOTT, LAW OFFICES, PLLC  
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*Attorneys for City of Bozeman*

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

CLAIMANTS: Allen D. Pruitt; Patricia Pruitt

OBJECTOR: City of Bozeman

NOTICE OF INTENT TO APPEAR: Four Corners  
Water & Sewer District

**CASE 41H-0083-R-2021**

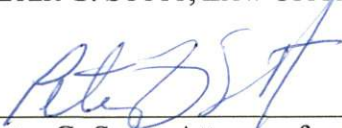
41H 46115-00

**OBJECTOR, CITY OF BOZEMAN'S, NOTICE OF FILING STIPULATION**

COMES NOW, OBJECTOR, City of Bozeman ("City") by and through its undersigned counsel of record and gives notice of filing the attached Stipulation between Allen D. Pruitt and Patricia Pruitt and objector, City.

DATED this 7th day of May, 2021.

PETER G. SCOTT, LAW OFFICES, PLLC

  
Peter G. Scott, Attorney for City of Bozeman

**CERTIFICATE OF SERVICE**

On this 7th day of May, 2021, the undersigned caused the electronic original and true and correct copies of the foregoing filed in the above-identified Court, was served on the following by United States First Class Mail, Postage Prepaid and via e-mail where indicated:

Montana Water Court (filed electronically) % Water Master J. Brown PO Box 1389 Bozeman MT 59771-3270 (406) 586-4364 <a href="mailto:watercourt@mt.gov">watercourt@mt.gov</a>	Allen D. Pruitt Patricia Pruitt 28289 Norris Road Bozeman, MT 59718-8149
Susan B. Swimley Attorney and Counselor at Law 1807 W. Dickerson, Unit B Bozeman, MT 59715-1311 <i>Co-Counsel for Four Corners Water &amp; Sewer District</i>	Dana Elias Pepper Bina R. Peters River and Range Law, PLLC PO Box 477 Bozeman, MT 59771-0477 (406) 599-7424 <a href="mailto:dana@riverandrangelaw.com">dana@riverandrangelaw.com</a> <a href="mailto:bina@riverandrangelaw.com">bina@riverandrangelaw.com</a> <a href="mailto:office@riverandrangelaw.com">office@riverandrangelaw.com</a> <i>Co-Counsel for Four Corners Water &amp; Sewer District</i>

  
\_\_\_\_\_

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*Attorneys for City of Bozeman*

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

CLAIMANTS: Allen D. Pruitt; Patricia Pruitt

**CASE 41H-0083-R-2021**

OBJECTOR: City of Bozeman

41H 46115-00

NOTICE OF INTENT TO APPEAR: Four Corners  
Water & Sewer District

**STIPULATION**

Claimants, Allen D. Pruitt and Patricia Pruitt (“Pruitts”) and Objector, City of Bozeman (“City”) enter into this Stipulation to resolve the City’s objection to Pruitts' claim 41H 46115-00.

**RECITALS**

- A. Pursuant to § 85-2-221, MCA, Pruitts filed a timely Statement of Claim for water right claim 41H 46115-00 with the Department of Natural Resources and Conservation (DNRC).
- B. Claim 41H 46115-00 was decreed with one priority date issue remark stating that the priority date may be questionable as the claimed priority date predates the Case No. 3850 (the “Bell Decree”).
- C. Pursuant to § 85-2-233, MCA, the City filed a timely objection to claim 41H 46115-00 with the Montana Water Court. The City objected to the priority date element of Pruitts’ claim.



- D. Claim 41H 46115-00 is owned solely by the Pruitts. The claim's purpose is irrigation and claims 1.40 cubic feet per second (cfs) from the West Gallatin River at a May 1, 1886, priority date.
- E. In the interest of resolving the City's objection and addressing the priority date issue remark without further litigation, the parties have executed this Stipulation.

### **AGREEMENT**

Pruitts and the City (collectively the "Parties"), agree as follows:

1. The Recitals are incorporated as if fully set out herein.
2. The Parties agree that the priority date and all remaining elements on the Preliminary Decree abstract for claim 41H 46115-00 shall remain as they appeared in the Decree.
3. Pruitts agree to subordinate claim 41H 46115-00 to the City's following West Gallatin River claims: 41H 138898-00, 41H 138899-00, 41H 138902-00, 41H 138903-00, 41H 30023118; 41H 30023119; and 41H 30023120.
4. The following remark shall be added to the abstract for Claim 41H 46115-00:  

PURSUANT TO A STIPULATION FILED 5/7/2021 IN CASE 41H-0083-R-2020, THIS WATER RIGHT SHALL BE SUBORDINATE IN PRIORITY TO THE FOLLOWING WATER RIGHTS: 41H 138898-00, 41H 138899-00, 41H 138902-00, 41H 138903-00, 41H 30023118; 41H 30023119; 41H 30023120.
5. As a result of the agreed-to subordination of claim 41H 46115-00, Pruitts relinquish their right to make call upon the City or otherwise enforce the priority of claim 41H 46115-00 against the City or its use of the claims listed in Paragraph No. 3 so that Pruitts can satisfy their own use under claim 41H 46115-00.
6. Upon the Court's acceptance and application of this Stipulation, the City agrees to withdraw its objection to claim 41H 46115-00.

### **ADDITIONAL PROVISIONS**

7. Each of the parties agrees to bear their own costs and attorney fees arising from the negotiation and execution of this Stipulation and in proceedings before the Montana Water Court regarding the above-captioned water rights.
8. Upon the entry of a Final Decree adopting the captioned water rights in accord with this Stipulation, the City's objection shall be deemed resolved and no further

proceedings shall be necessary to address those objections, provided that the Final Decree does not expand or change other substantive elements of the claim.

9. This Stipulation is binding on all heirs, successors and assigns, representatives, and agents of the parties.
10. This Stipulation is the resolution of a disputed water right claim and is not to be construed as an admission against the interests of any parties.
11. This Stipulation resolves the disputed issues in this particular case and the terms set forth herein do not create any precedent for the treatment in litigation or settlement of any other issue, claim, or case.
12. Each of the parties entered into and executed this Stipulation voluntarily, in good faith, and without any fraud, misunderstanding, misrepresentation, overreaching, duress, or undue influence. The parties represent that the execution of this Stipulation is knowing and voluntary.
13. The parties hereto represent and affirm that the signatories to this Stipulation are legally authorized to bind the party to this matter.
14. Nothing in the Stipulation shall create any right, claim, cause of action, objection, defense, or other remedy in any person not a party to the Stipulation.
15. The parties agree that this Stipulation may be signed electronically and in counterparts, and all of such counterparts collectively, shall be construed as the equivalent of a single document.
16. The parties agree that this document embodies the entire Stipulation of the parties.

IT IS SO AGREED AND STIPULATED


Dated: 5-7-, 2021 Allen David Pruitt

Print Name: Allen D. Pruitt

Patricia Pruitt

Print Name: Patricia Pruitt

Dated: 4-22, 2021 CITY OF BOZEMAN

  
Print Name: Peter Scott  
Its: Attorney of Record

**CERTIFICATE OF SERVICE**

On this 7<sup>th</sup> day of May, 2021, the undersigned caused the electronic original and true and correct copies of the foregoing filed in the above-identified Court, was served on the following by United States First Class Mail, Postage Prepaid and via e-mail where indicated:

<p>Montana Water Court (filed electronically)  % Water Master J. Brown  PO Box 1389  Bozeman MT 59771-3270  (406) 586-4364  <a href="mailto:watercourt@mt.gov">watercourt@mt.gov</a></p>	<p>Allen D. Pruitt  Patricia Pruitt  28289 Norris Road  Bozeman, MT 59718-8149</p>
<p>Susan B. Swimley  Attorney and Counselor at Law  1807 W. Dickerson, Unit B  Bozeman, MT 59715-1311  <i>Co-Counsel for Four Corners Water &amp; Sewer District</i></p>	<p>Dana Elias Pepper  Bina R. Peters  River and Range Law, PLLC  PO Box 477  Bozeman, MT 59771-0477  (406) 599-7424  <a href="mailto:dana@riverandrangelaw.com">dana@riverandrangelaw.com</a>  <a href="mailto:bina@riverandrangelaw.com">bina@riverandrangelaw.com</a>  <a href="mailto:office@riverandrangelaw.com">office@riverandrangelaw.com</a>  <i>Co-Counsel for Four Corners Water &amp; Sewer District</i></p>

  
Scott | Law

June 23, 2021

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Montana Water Court

*Attorneys for Four Corners County Water & Sewer District*

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

\*\*\*\*\*

CLAIMANTS: Allen D Pruitt; Patricia Pruitt	<b>41H-0083-R-2021</b>
OBJECTOR: City of Bozeman	41H 46115-00
NOTICE OF INTENT TO APPEAR: Four Corners County Water & Sewer District	

**Settlement Agreement**

Claimants, Allen D. Pruitt and Patricia Pruitt ("Pruitts") and Notice of Intent to Appear, Four Corners County Water & Sewer District ("the District") enter into this Settlement Agreement to resolve the District's Notice of Intent to Appear on Pruitts' claim 41H 46115-00.

**RECITALS**

- A. Pursuant to § 85-2-221, MCA, Pruitts filed a timely Statement of Claim for water right claim 41H 46115-00 with the Department of Natural Resources and Conservation (DNRC).
- B. Claim 41H 46115-00 was decreed with one priority date issue remark stating that the priority date may be questionable as the claimed priority date predates the Case No.3850 (the "Bell Decree").

- C. Pursuant to § 85-2-233, MCA, the District filed a timely Notice of Intent to Appear on claim 41H 46115-00 with the Montana Water Court.
- D. Claim 41H 46115-00 is owned solely by the Pruitts. The claim's purpose is irrigation and claims 1.40 cubic feet per second (cfs) from the West Gallatin River at a May 1, 1886 priority date.
- E. In the interest of resolving the District's Notice of Intent to Appear and addressing the priority date issue remark without further litigation, the parties have executed this Settlement Agreement.

### **AGREEMENT**

Pruitts and the District (collectively the "Parties"), agree as follows:

1. The Recitals are incorporated as if fully set out herein.
2. The Parties agree that the priority date and all remaining elements on the Preliminary Decree abstract for claim 41H 46115-00 shall remain as they appeared in the Decree.
3. Pruitts agree to subordinate claim 41H 46115-00 to the District's West Gallatin River claims: 41H 12221-00, 41H 12232-00, 41H 126909-00, and 41H 126910-00, the following remark shall be added to the abstract for Claim 41H 46115-00:


PURSUANT TO A SETTLEMENT AGREEMENT FILED IN CASE 41H-0083-R-2020, THIS WATER RIGHT SHALL BE SUBORDINATE IN PRIORITY TO THE FOLLOWING WATER RIGHTS: 41H 12221-00, 41H 12232-00, 41H 126909-00, and 41H 126910-00.
4. As a result of the agreed-to subordination of claim 41H 46115-00, Pruitts relinquish their right to make call upon the District or otherwise enforce the priority of claim 41H 46115-00 against the District or its use of the claims listed in Paragraph No. 3 so that Pruitts can satisfy their own use under claim 41H 46115-00.

### **ADDITIONAL PROVISIONS**

5. Each of the parties agrees to bear their own costs and attorney fees arising from the negotiation and execution of this Settlement Agreement and in proceedings before the Montana Water Court regarding the above-captioned water rights.
6. Upon the entry of a Final Decree adopting the captioned water rights in accord with this Settlement Agreement, the District's Notice of Intent to Appear shall be deemed resolved and no further proceedings shall be necessary to address the Notice of Intent to Appear, provided that the Final Decree does not expand or change other substantive elements of the claim.
7. This Settlement Agreement is binding on all heirs, successors and assigns, representatives, and agents of the parties.
8. This Settlement Agreement is the resolution of a disputed water right claim and is not to be construed as an admission against the interests of any parties.
9. This Settlement Agreement resolves the disputed issues in this particular case and the terms set forth herein do not create any precedent for the treatment in litigation or settlement of any other issue, claim, or case.
10. Each of the parties entered into and executed this Settlement Agreement voluntarily, in good faith, and without any fraud, misunderstanding, misrepresentation, overreaching, duress, or undue influence. The parties represent that the execution of this Stipulation is knowing and voluntary.
11. The parties hereto represent and affirm that the signatories to this Settlement Agreement are legally authorized to bind the party to this matter.
12. Nothing in the Settlement Agreement shall create any right, claim, cause of action, objection, defense, or other remedy in any person not a party to the Settlement Agreement.

13. The parties agree that this Settlement Agreement may be signed electronically and in counterparts, and all of such counterparts collectively, shall be construed as the equivalent of a single document.

14. The parties agree that this document embodies the entire Settlement Agreement of the parties.

  
\_\_\_\_\_  
On behalf of Four Corners County  
Water & Sewer District  
Date: Jun 23, 2021

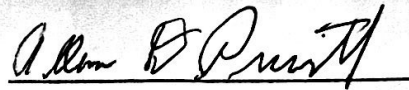
\_\_\_\_\_  
Allen D. Pruitt  
Date: \_\_\_\_\_

\_\_\_\_\_  
Patricia Pruitt  
Date: \_\_\_\_\_


13. The parties agree that this Settlement Agreement may be signed electronically and in counterparts, and all of such counterparts collectively, shall be construed as the equivalent of a single document.

14. The parties agree that this document embodies the entire Settlement Agreement of the parties.

\_\_\_\_\_  
On behalf of Four Corners County  
Water & Sewer District  
Date: \_\_\_\_\_



Allen D. Pruitt  
Date: 6-7-21



Patricia Pruitt  
Date: 6-7-21



### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was duly served via email or U.S. first class mail, postage prepaid, on this 23rd day of June, 2021, upon the following:

Peter G. Scott  
Peter G. Scott, Law Offices, PLLC  
682 Ferguson, Suite 4  
Bozeman, MT 59718  
[peter@scott-law.com](mailto:peter@scott-law.com)  
[office@scott-law.com](mailto:office@scott-law.com)

Susan B. Swimley  
Attorney and Counselor at Law  
1807 W Dickerson Unit B  
Bozeman, MT 59715

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Patricia Pruitt  
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