

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

ELECTRONICALLY FILED

41H-0089-R-2021

September 10, 2021

Montana Water Court

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

CLAIMANT: Ponderosa Water & Light System

OBJECTOR: Ponderosa Home Owners Association

CASE 41H-0089-R-2021

41H 29093-00

41H 29094-00

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

FINDINGS OF FACT

1. The claims in this case appeared in the Preliminary Decree for Basin 41H with Montana Department of Natural Resources and Conservation (DNRC) issue remarks. The claims received Objections from Ponderosa Home Owners Association which has the same address as Claimant, but a different name.

2. Ponderosa HOA requested the following changes be made:

3. The ownership for claims 41H 29093-00 and 41H 29094-00 should be updated to Ponderosa Home Owners Association based on the covenants to the HOA.

4. Claim 41H 29093-00 has an issue remark questioning the priority date based on the date of completion of groundwater appropriation or GW2 form. Ponderosa HOA states the remark is correct and the priority date should be changed to February 26, 1968.

5. According to an affidavit filed by the president of Ponderosa HOA, Jeannette Berry, the locations of the points of diversion on these claims are incorrect. The well for claim 41H 29093-00 is only located in the SWNWSE Sec. 11, Twp. 2S, Rge. 5E. POD ID 2 should be removed from that claim. The well for claim 41H 29094-00 is located in the NWNWSE of Sec. 11, Twp. 2S, Rge. 5E.

6. There are no other objections or issue remarks on these claims.

CONCLUSIONS OF LAW

1. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

2. 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.

3. 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.

4. 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.

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

6. 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.

7. The Objection List issued in this basin gave all water users notice of the possible correction of the elements addressed in this Master’s Report. This notice is reasonably calculated to inform parties of proceedings affecting their water rights.

8. For the above-mentioned reasons, the claims in this case should be modified as shown on the attached abstracts to resolve all issue remarks and to accurately reflect historical use.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified above to correct the Preliminary Decree for this Basin. Post Decree Abstracts of Water Right Claims are served with this

Report to confirm that the recommended changes have been made in the state's centralized record system.

Julia J. Nordlund
Senior Water Master

Service Via Electronic Mail:

Dana Elias Pepper
River and Range Law, PLLC
PO Box 477
Bozeman, MT 59771-0477
(406) 599-7424
dana@riverandrangelaw.com
office@riverandrangelaw.com

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

Water Right Number: 41H 29093-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: PONDEROSA HOME OWNERS ASSOCIATION
C/O MARY F. WOLF
202 YERGER DRIVE
BOZEMAN, MT 59718

Priority Date: FEBRUARY 26, 1968

Type of Historical Right: FILED

Purpose (Use): COMMERCIAL

Flow Rate: 60.00 GPM

Volume: 27.00 AC-FT

Source Name: GROUNDWATER

Source Type: GROUNDWATER

THIS COMMERCIAL USE OF WATER UTILIZES THREE WELLS MANIFOLDED TOGETHER. SEE CLAIM NO. 41H 29094-00 AND CERT. NO. 41H 1050-00.

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		SWNWSE	11	2S	5E	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			W2NWSE	11	2S	5E	GALLATIN

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

Water Right Number: 41H 29094-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: PONDEROSA HOME OWNERS ASSOCIATION
C/O MARY F. WOLF
202 YERGER DRIVE
BOZEMAN, MT 59718

Priority Date: APRIL 15, 1961

Type of Historical Right: USE

Purpose (Use): COMMERCIAL

Flow Rate: 150.00 GPM

Volume: 27.00 AC-FT

Source Name: GROUNDWATER

Source Type: GROUNDWATER

THIS COMMERCIAL USE OF WATER UTILIZES THREE WELLS MANIFOLDED TOGETHER. SEE CLAIM NO. 41H 29093-00 AND CERT. NO. 41H 1050-00.

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		NWNWSE	11	2S	5E	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			W2NWSE	11	2S	5E	GALLATIN