

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

* * * * *

CLAIMANTS: Accreted LLC; Barbara N. Cok; John M. Cok; Jody
Verwolf; Leroy Verwolf; Winslow Group LLC

CASE **41H-0097-R-2021**
41H 148455-00

OBJECTOR: Big Sky County Water & Sewer Dist #363

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 148455-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with ownership issue remarks from the Montana Department

of Natural Resources and Conservation's (DNRC) review in preparation of the preliminary decree.

Big Sky County Water & Sewer (Big Sky), through counsel Michael Cusick, filed an objection to the claim's flow rate/volume. Big Sky filed a withdrawal of objection indicating it was filed in error.

The Water Court consolidated the water right claim into Water Court case 41H-0097-R-2021 and sent an order giving notice of potential ownership to the entities named in DNRC's issue remarks.

The Water Court presently resolves the issue in this case.

ISSUES

1. *Whether the Water Court dismisses the objection filed by Big Sky County Water & Sewer.*

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.

After the Water Court issues a preliminary decree in a basin, an objection period provides parties with an ownership interest in water or its use the opportunity to raise issues regarding their own water rights or other water rights in the preliminary decree. Section 85-2-233(1)(b); *Mont. Trout Unlimited v. Beaverhead Water Co.*, 2011 MT 151, ¶ 33, 361 Mont. 77, 255 P.3d 179.

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 bears the burden of proof. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

DISCUSSION

1. Whether the Water Court dismisses the objection filed by Big Sky County Water & Sewer.

Big Sky filed a withdrawal of objection indicating it was filed in error. The Water Court therefore dismisses the objection and decrees the claim's elements as they appeared in the preliminary decree.

Furthermore, the issue remarks appearing on the claim's preliminary decree abstract gave notice of potential ownership to several potential owners. The Water Court's previous order courtesy copied the potential owners on the service list and indicated ownership could be updated after the close of the case's proceeding by contacting the Bozeman DNRC office. The issue remarks are resolved and hereby removed.

RECOMMENDATIONS

This Water Master recommends the Water Court to remove the resolved issue remarks. The Water Court attaches a post-decree abstract for water right claim 41H 148455-00 to this Master's Report.

Kirsa Shelkey
Water Master
she/her/hers

Service via USPS Mail:

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

Water Right Number: 41H 148455-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BARBARA N COK
8910 CHURCHILL RD
MANHATTAN, MT 59741 8412

JOHN M COK
3300 HARPER PUCKETT RD
BOZEMAN, MT 59718 8886

JODY VERWOLF
2531 MAGENTA RD
BOZEMAN, MT 59718 9460

LEROY VERWOLF
2531 MAGENTA RD
BOZEMAN, MT 59718 9460

WINSLOW GROUP LLC
81295 GALLATIN RD
BOZEMAN, MT 59718 9098

ACCREDITED LLC
PO BOX 150
GALLATIN GATEWAY, MT 59730 0150

Priority Date: MAY 1, 1867

Type of Historical Right: DECREEED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 122.40 GPM

***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:** 7.93

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</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNW	2	3S	4E	GALLATIN	

Period of Diversion: MAY 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: ALLISON-LEWIS DITCH

Period of Use: MAY 15 TO OCTOBER 15

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			14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 198				
2	1.00			14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 213				
3	1.00			14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 220				
4	0.11			14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 254				
5	2.50			14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 255				
6	1.00			14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 534				
7	0.11			14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 028				
8	0.11			14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 031				
9	0.11			14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 032				
10	0.11			14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 033				
11	0.11			14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 034				
12	0.11			14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 037				
13	0.11			14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 038				
14	0.11			14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 041				
15	0.11			14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 098				
16	0.11			14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 099				
17	0.11			14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 100				
18	0.11			14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 101				
Total:	7.93						