

41H-0184-R-2020

September 14, 2021

Montana Water Court

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

* * * * *

CLAIMANTS: Bridger Vale LLC; State of Montana Department
of Fish, Wildlife & Parks

CASE 41H-0184-R-2020
41H 40526-00

OBJECTOR: State of Montana Department of Fish, Wildlife &
Parks

NOTICE OF INTENT TO APPEAR: Ashley Bickerstaff; Taylor
Bickerstaff; Blackwood
Family 2014 Trust; City of
Bozeman

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 40526-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with issue remarks from the Montana Department of Natural Resources and Conservation's (DNRC) review in preparation of the preliminary decree. DNRC's water rights database indicates the State of Montana, Department of Fish, Wildlife & Parks (FWP) and Bridger Vale LLC currently co-own water right claim 41H 40526-00.

The claim received a May 9, 2019 objection from FWP, represented by Kevin Reckhoff, to all elements of the water right claim. The objection asserts the claim was either not perfected, not perfected to the extent claimed, or abandoned.

On November 14, 2019, Blackwood Family 2014 Trust, through counsel Breann Johnson, and Taylor and Ashley Bickerstaff, through counsel Breann Johnson, filed notices of intent to appear (NOIAs) in the case proceedings resolving the objection. On November 15, 2019, the city of Bozeman, through counsel Peter Scott, filed an additional NOIA.

The Water Court consolidated water right claim 41H 40526-00 into Water Court case 41H-0184-R-2020 and held a February 10, 2021 status conference attended by representatives for FWP, Blackwood Family 2014 Trust, the Bickerstaffs, and the City. Bridger Vale, LLC, did not attend. The court and the parties briefly discussed FWP's objection. On August 27, 2021, the parties filed a Settlement Stipulation with the court. The NOIA parties subsequently filed notices that the Settlement Stipulation resolves the NOIA parties' concerns.

The Water Court presently resolves the issue in this case.

ISSUES

- 1. Whether the Water Court approves the stipulation filed by the parties.*

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.

In Water Court proceedings, the parties may file settlements stipulating the terms under which the parties contractually agree to resolve decree objections. A settlement may include a claimant’s legally binding commitment to modify water right claims to resolve objections and issue remarks and an objector’s agreement to withdraw objections conditioned upon the court’s acceptance of the claim modifications. *E.g., In re Pondera Cty. Canal & Reservoir Co.*, Case 41M-202, 2020 Mont. Water LEXIS 19 (Jan. 9, 2020).

Settlement agreements do not bind the Water Court and are subject to the court’s review and approval. Rule 17(a), W.R.Adj.R. The court may rely on the stipulated facts and agreements of a settlement that are “not contrary to law, court rule, or public policy.” *In re Marriage of Hill*, 265 Mont. 52, 58, 874 P.2d 705, 708 (1994). When a stipulation proposes modifications to water right claim elements, the court must evaluate each proposed modification to ensure the modification is supported by the evidence and within the court’s authority to adjudicate. *In re Argabright*, Case 41I-265, 2014 Mont. Water LEXIS 9, (December 12, 2014) (affirming rejection of stipulation); *In re Dana Ranch Co.*, Case 41J-265, 2017 Mont. Water LEXIS 13 (rejecting stipulation). The water right adjudication rules require settlement agreements enlarging an element of a water right to meet the applicable burden of proof. Rule 17(b), W.R.Adj.R. The rules do not require

settlement agreements reducing an element of a water right to meet the applicable burden of proof. Rule 17(c), W.R.Adj.R.

DISCUSSION

1. Whether the Water Court approves the stipulation filed by the parties.

The Settlement Stipulation signed and filed by the claim's co-owners indicates the claim's reservoir record should be removed; "[t]he claim file does not support listing the reservoir, currently known as Glen Lake, as a potential secondary diversion." Furthermore, co-owners agree the claim's ditch name is McADOW Ditch, not Meadow Ditch.

The NOIA parties, Blackwood Family 2014 Trust, the Bickerstaffs, and the City, filed notices indicating the court's approval of the stipulation resolved the NOIA parties' concerns.

Based on the court's review, the Settlement Stipulation is not contrary to law, court rule, or public policy. The Settlement Stipulation does not propose modifications enlarging any element of the water right claim. The Water Court approves the Settlement Stipulation filed by the parties, thereby removing the reservoir record from the claim's decree abstract and modifying the claim's ditch name from Meadow to McADOW Ditch.

The objection and NOIAs are thereby resolved.

RECOMMENDATIONS

This Water Master recommends the Water Court remove the reservoir record from the claim's decree abstract and to modify the claim's ditch name from Meadow to McADOW Ditch. The Water Court attaches a post-decree abstract for water right claim 41H 40526-00 to this Master's Report, as well as the Settlement Stipulation filed by the parties.

Kirsa Shelkey
Water Master
she/her/hers

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

Water Right Number: 41H 40526-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BRIDGER VALE LLC
PO BOX 930
MANHATTAN, MT 59741 0930

MONTANA, STATE OF DEPT OF FISH WILDLIFE & PARKS
PO BOX 200701
HELENA, MT 59620 0701

Priority Date: DECEMBER 31, 1866

CLAIMANTS HAVE AGREED TO SUBORDINATE THE PRIORITY OF THIS CLAIM TO ANY AND ALL CLAIMS OF THE CITY OF BOZEMAN FROM SOURDOUGH CREEK, ALSO KNOWN AS BOZEMAN CREEK. THE OWNERS OF WATER RIGHT CLAIM 41H 40526-00 SHALL AT NO TIME CALL FOR WATER AS AGAINST ANY CLAIM OWNED BY THE CITY OF BOZEMAN FROM SOURDOUGH/BOZEMAN CREEK. THE CITY OF BOZEMAN AGREES TO WITHDRAW ITS OBJECTION AND FURTHER AGREES THAT IT SHALL NOT CLAIM ANY RIGHT, TITLE OR INTEREST IN OR TO THE OVERFLOW WATER WHICH RUNS OUT OF GLEN LAKE UNLESS SPECIFICALLY ACQUIRED BY DEED FROM THE CLAIMANTS. SEE CASE 41H-169.

Type of Historical Right: DECREEED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.16 CFS

Volume: 256.00 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 50.00

Source Name: SOURDOUGH CREEK

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		NWNWSE	6	2S	6E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: DAM

Ditch Name: MCADOW DITCH

Period of Use: APRIL 1 TO OCTOBER 1

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	50.00		W2SW	31	1S	6E	GALLATIN

Total: 50.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

40525-00

40526-00

40527-00

40528-00

41H-0184-R-2020

August 27, 2021

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Montana Water Court

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

CLAIMANT: Bridger Vale LLC; State of Montana Department of Fish,
Wildlife & Parks

OBJECTOR: State of Montana Department of Fish, Wildlife and Parks

NOTICE OF INTENT TO APPEAR: Ashley Bickerstaff, Taylor
Bickerstaff, Blackwood Family 2014 Trust; City of Bozeman

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) CASE 41H-0184-R-
) 2020
) 41H 40526-00
)

SETTLEMENT STIPULATION

This Stipulation is entered into as of the last date written below by and between Claimant Bridger Vale LLC, and Objector/Claimant Montana Department of Fish, Wildlife & Parks (DFWP).

RECITALS

1. Claimants or their predecessors timely filed Statement of Claim 41H 40526-00 with the Montana Department of Natural Resources and Conservation (DNRC).
2. On or about October 11, 2018 the Montana Water Court issued a Preliminary Decree in Basin 41H for claim number 41H 40526-00.
3. On May 9, 2019, Objector DFWP filed timely objections to claim number 41H 40526-00.
4. On May 12 and July 8, 2021, DFWP conducted site visits to establish the historic and current elements of claim number 41H 40526-00. The findings of those visits are consistent with the terms of this settlement agreement.
5. Claimants and Objector DFWP desire and intend to settle all of their respective objections to claim number 41H 40526-00, as set forth in this Stipulation.

AGREEMENTS

The parties to this Stipulation hereby stipulate and agree as follows:

6. After reviewing the claim file and conducting site visits, the parties agree to remove the reservoir record entirely. The claim file does not support listing the reservoir, currently known as Glen Lake, as a potential secondary diversion.

7. The ditch name shall be amended to read as follows:

Ditch Name: McADOW DITCH

8. Objector DFWP agrees that its objections to claim number 41H 40526-00 shall be deemed withdrawn subject to the terms of this Stipulation.

9. The parties agree and understand that the law of continuous beneficial use still applies to claim number 41H 40526-00, and that abandonment issues may arise if there is a prolonged period of nonuse after the filing of this Stipulation with the Montana Water Court.

10. This Stipulation is the compromise of disputed water claims and is not to be construed as an admission against the interests of any party.

11. The parties agree that upon issuance of a Master's Report, Order Adopting Master's Report, and Final Decree that incorporates the changes and amendments to claim number 41H 40526-00 set forth in this Stipulation, the Water Court shall deem the Notices of Objections filed by DFWP to claim 41H 40526-00 withdrawn.

12. The terms of this Stipulation are binding on the parties, their successors, heirs, and assigns.

13. Each party represents that it has the authority to execute this Stipulation and is bound by the terms herein.

14. Each undersigned party entered into and executed this Stipulation voluntarily, in good faith, and without any fraud, misunderstanding, misrepresentation, overreaching, duress, or undue influence.

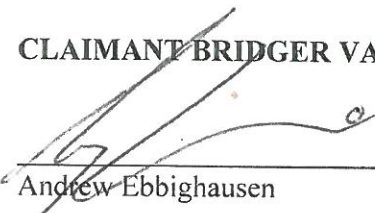
15. Each party agrees to bear its own costs and attorney fees arising from the negotiation and execution of this Stipulation and the proceedings before the Montana Water Court.

16. Each party represents that their execution of the Stipulation is knowing and voluntary, and that they had the opportunity, if so desired, to consult with legal counsel before executing this document.

17. This Stipulation may be executed by the parties in several counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one

instrument. Facsimile or electronically transmitted copies of signatures will be deemed the equivalent of original signatures.


CLAIMANT BRIDGER VALE LLC



Andrew Ebbighausen

Date: 8/23/2021

OBJECTOR/CLAIMANT MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS



Kevin Rechkoff,
Agency Legal Counsel
Montana Department of Fish, Wildlife and Parks

Date: 8/26/2021