

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

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CLAIMANTS: James A. Orvis; Margarita C. Orvis

CASE 41H-0268-R-2021
41H 139856-00

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 139856-00, owned by Margarita and James Orvis, appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with an issue remark questioning the claim's priority date received during the Department of Natural Resources and Conservation's (DNRC) review in preparation of the preliminary decree.

The Water Court consolidated water right claim 41H 139856-00 into Water Court case 41H-0268-R-2020 and set a filing deadline for the claim's owner to file information evidencing the accurate historical priority date for the water right claim. The claim's owners did not file information with the court.

The Water Court presently resolves the issue in this case.

ISSUES

1. *Whether a preponderance of the evidence supports modifying the claim's priority date.*

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 claim's priority date.*

The priority-date issue remark appearing on water right claim 41H 139856-00 indicates: "THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED NOTICE OF WATER RIGHT IS 04/02/1900."

Consistent with the original statement of claim, the claim's preliminary decree abstract indicates water right claim 41H 139856-00 is a filed flood-irrigation right for surface water from South Dry Creek in Gallatin County, Montana, with an April 21, 1900

priority date. However, it appears the date of appropriation may be April 17, 1900 according to the attached Notice of Water Right. It is unclear to the court what information DNRC reviewed in its recommendation that the priority date may be April 2, 1900.

The Court's previous order stated: "If the claim's owners do not file information by the deadline, the court will modify the claim's priority date from ~~April 21, 1900~~, to **April 17, 1900**." The claim's owners did not file information with the court.

Accordingly, a preponderance of the evidence supports modifying the claim's priority date from April 21, 1900, to April 17, 1900, consistent with accurate historical use.

RECOMMENDATIONS

This Water Master recommends the Water Court to remove the resolved issue remarks and to modify the priority date for water right claim 41H 139856-00 from ~~APRIL 21, 1900~~, to **APRIL 17, 1900**. The court attaches a post-decree abstract to this Master's Report to reflect the changes made.

Kirsa Shelkey
Water Master
she/her/hers

Service via USPS Mail:

James A. Orvis
Margarita C. Orvis
9050 Chapman Rd
Bozeman, MT 59718

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

Water Right Number: **41H 139856-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JAMES A ORVIS
 9050 CHAPMAN RD
 BOZEMAN, MT 59718 7646

MARGARITA C ORVIS
9050 CHAPMAN RD
BOZEMAN, MT 59715

Priority Date: APRIL 17, 1900

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 152.59 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: 9.00

Source Name: SOUTH DRY 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		NESENW	9	3S	5E	GALLATIN

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 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	9.00		N2SWSW	33	2S	5E	GALLATIN

Total: 9.00