

Montana Water Court  
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41H-0358-R-2021

September 14, 2021

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

Montana Water Court

\* \* \* \* \*

CLAIMANTS: Bridgeman LLC; Christopher Olocco; Karen E.  
Olocco

CASE 41H-0358-R-2021  
41H 132293-00

**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 132293-00 co-owned by Bridgeman LLC and Karen and Christopher Olocco, appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with issue remarks received during the Department of Natural Resources and Conservation's (DNRC) review in preparation of the preliminary decree.

The Water Court originally consolidated water right claim 41H 132293-00 with water rights claims 41H 132292-00, 41H 148645-00, 41H 148646-00, 41H 148647-00, and 41H 148648-00, owned by Bridgeman LLC, into Water Court case 41H-0355-R-2021 and set a filing deadline for the claims' owners to file information resolving the issues indicated by the specific issue remarks appearing on water rights claims 41H 132292-00 and 41H 132293-00.

On May 19, 2021, Karen Olocco filed information with the court regarding water right claim 41H 132293-00. Bridgeman LLC did not file information with the court.

The Water Court removed water right claim 41H 132293-00 from Water Court case 41H-0355-R-2021, and reconsolidated the water right claim into Water Court case 41H-0358-R-2021.

The Water Court presently resolves the issue in this case.

### ISSUES

1. *Whether a preponderance of the evidence supports modifying the means of diversion and point of diversion for water right claim 41H 132293-00.*

### 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 means of diversion and point of diversion for water right claim 41H 132293-00.*

The claim's preliminary decree abstract indicates water right claim 41H 132293-00 is a decreed flood-irrigation right for surface water diverted from Ross Creek by a headgate on Spring Ditch in the SESWSW of Section 13, Township 1N, Range 5E, Gallatin County. An April 12, 1994 Master's Report in the claim's file indicates the point of diversion was modified from the SWNESW of Section 21, to the SESWSW of Section 13, Township 1N, Range 5E, Gallatin County, consistent with information in a 1993 affidavit filed by the Dringles. As a result, the following issue remark was added to the claim's preliminary decree abstract:

THE PARTIES AGREED TO CHANGE THE POINT OF DIVERSION. BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE TEMPORARY PRELIMINARY DECREE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE, MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

The purpose of this issue remark was to give notice to other water users in the basin. The issue remark is hereby removed, as it requires no additional resolution.

However, a December 7, 2017 record of contact form appearing in the claim's file indicates this modification is incorrect. DNRC and the Oloccos indicated their belief in 2017 that the point of diversion was in the SWNESW of Section 21, Township 1N, Range 5E, Gallatin County, and that the water right does not utilize Spring Ditch. The Oloccos filed a December 18, 2017 amendment to that effect. The amendment states: "We agree that point of diversion is actually in SWNESW of Section 21, Township 1N, Range 5E, Gallatin County. Water is taken directly from Ross Creek." The amendment was not signed by co-owner Bridgeman LLC. These discussions resulted in the addition of the following issue remarks to the claim's preliminary decree abstract:

AN AMENDMENT WAS SUBMITTED ON 12/18/2017 REQUESTING TO AMEND THE POINT OF DIVERSION. THE AMENDMENT HAS NOT BEEN IMPLEMENTED AS IT HAS NOT BEEN SIGNED BY ALL OWNERS OF DNRC RECORD.

AN AMENDMENT WAS SUBMITTED ON 12/18/2017 REQUESTING TO AMEND THE POINT OF DIVERSION. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

SPRING DITCH NOT USED FOR THIS RIGHT. SEE P40 REMARK AND PDF DOCUMENTATION.

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SWNESW SEC 21 TWP 1N RGE 5E GALLATIN COUNTY.

Because the court presently considers the filed amendments, those notice-based issue remarks are resolved and hereby removed.

On May 19, 2021, Karen Olocco filed information with the court, stating:

Water right 41H 132293-00 currently lists the point of diversion at a headgate that feeds the Spring Ditch in Section 13 Township 1N, Range 5E, Gallatin County. The Spring Ditch carries water diverted from Ross Creek and delivers it to places of use for neighboring upstream rights (e.g., 41H 126872-00, 41H 126873-00, 41H 8353-00). The ditch water continues until it seemingly merges back into Ross Creek before reaching our property (see Photo 1 from Water Resource Survey, taken prior to 1961). With the expert assistance from DNRC Water Resource Specialist, Fred Offenkrantz, closer examination of the Water Resource Survey Aerial photo (Photo 2) reveals that Ross Creek is actually flowing in the Spring Ditch before it reaches our property. Photo 2 shows that, prior to 1961, Ross Creek had changed course and was flowing in what was formerly the Spring Ditch.

In 1982, the previous owner, Rector Ranch Inc, of water right 41H 132293-00 filed the Place of Diversion to be in Section 21 on our property. However, documents on file with the DNRC (via Query System Doc Images scan date 8/19/2010) show that there was some contention on this right regarding the point of diversion (Water Court Case 41H 233). As a result of this litigation, all parties involved agreed to change the point of diversion from SWNESW Sec 21 TWP 01N Rge 05E to a Headgate in Sec 13 based on historical use dictated by Gallatin County Decree 6440 (Findings of Fact Items III and IV, Conclusion of the Law Item II). As such, we conclude that the headgate location in Sec 13 and the Spring ditch are *historically* correct.

(emphasis added).

The court appreciates the thoroughness of Olocco's filing. Per statute, the Water Court has authority to adjudicate existing or historical water rights, meaning water rights pre-dating July 1, 1973. Changes to existing water rights are under the purview of DNRC by statute. Based on the court's present review of Olocco's filing and attachments, there is not enough evidence to disturb the previous findings of fact and conclusions of law in the April 12, 1994 Master's Report for Water Court case 41H-233 (adopted May 4, 1994). In that case, the Water Master concluded, based on agreement by the claimants and objectors in that case, that the claim's accurate historical point of diversion was the headgate on Spring Ditch in the SESWSW of Section 13, Township 1N, Range 5E, Gallatin County.

While DNRC and the Oloccos concluded in 2017 that the water right claim does not utilize Spring Ditch and that the claim's point of diversion should be amended to the SWNESW of Section 21, Township 1N, Range 5E, Gallatin County, information filed by Karen Olocco on May 19, 2021, appears to contradict the 2017 conclusions regarding the claim's historical point of diversion. Specifically, Olocco indicates "DNRC Water Resource Specialist, Fred Offenkrantz, [determined] that Ross Creek is actually flowing in the Spring Ditch before it reaches [Olocco's] property." Olocco's filing further states, "As such, we conclude that the headgate location in Sec 13 and the Spring ditch are *historically* correct."

The Water Court thus concludes the issue remark stating, "SPRING DITCH NOT USED FOR THIS RIGHT," is incorrect and can be removed, and that the accurate historical location of the point of diversion is in the SESWSW of Section 13, Township 1N, Range 5E, Gallatin County. The claim's point of diversion will appear as it did in the temporary preliminary decree. DNRC's issue remark regarding the location of the point of diversion is 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 of the water right claim to this Master's Report to evidence the changes made.

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Kirsa Shelkey  
Water Master  
*she/her/hers*

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

Bridgeman LLC  
PO Box 930129  
Wixom, MI 48393

Christopher Olocco  
Karen E. Olocco  
2805 Wes David Rd  
Belgrade, MT 59714

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

**Water Right Number:** 41H 132293-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** CHRISTOPHER OLOCCO  
2805 WES DAVIS RD  
BELGRADE, MT 59714

KAREN E OLOCCO  
2805 WES DAVIS RD  
BELGRADE, MT 59714

BRIDGEMAN LLC  
PO BOX 930129  
WIXOM, MI 48393 0129

**Priority Date:** MAY 15, 1865

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**\*Flow Rate:** 291.70 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:** 176.60

**\*Source Name:** ROSS 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		SESWSW	13	1N	5E	GALLATIN

**Period of Diversion:** MAY 1 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** SPRING DITCH

**Period of Use:** MAY 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	80.00		W2SW	21	1N	5E	GALLATIN
2	80.00		E2SE	20	1N	5E	GALLATIN
3	16.60		NESW	21	1N	5E	GALLATIN
<b>Total:</b>	176.60						

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**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.

132293-00

132294-00

132295-00