

Montana Water Court
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ELECTRONICALLY FILED

41H-0369-R-2021

September 2, 2021

Montana Water Court

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

CLAIMANT: Paul J Gaffney

CASE 41H-0369-R-2021
41H 152481-00
41H 30110527

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

Claims 41H 152481-00 and 41H 30110527 are domestic groundwater claims owned by Paul Gaffney. The claims appeared in the Preliminary Decree for Basin 41H with Department of Natural Resources and Conservation issue remarks. Claim 41H 152481-00 received an issue remark notifying Claimant of DNRC modifications to the point of diversion. Claim 41H 30110527 received an issue remark notifying that the claim is exempt and an issue remark stating that no volume was claimed, but that the volume guideline for the purpose of domestic groundwater is 2.75 acre-feet per year. These claims were consolidated into Water Court Case 41H-369-R-2021.

FINDINGS OF FACT

1. On June 15, 2021, the Court issued an Order Setting Filing Deadline for Claimant to file documents supporting a volume for claim 41H 30110527 to resolve the issue remark by August 10, 2021.
2. The Order stated that if nothing was filed by the deadline, the abstract for claim 41H 30110527 would be modified to reflect the DNRC guideline for a domestic groundwater claim of 2.75 acre-feet per year.
3. The Court did not receive evidence from Claimant as of the date of this Report and the deadline has passed.
4. The new volume for claim 41H 30110527 is 2.75 acre-feet.
5. The remaining issue remarks to these claims are notice-only and can be removed.

CONCLUSIONS OF LAW

1. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. When resolving issue remarks, the 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.
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. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing, or fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R.

4. Pursuant to Section 85-2-248(9), MCA, and Rule 22, W.R.Adj.R., when a claimant fails to comply with an Order issued by the Water Court, including an Order issued by a Water Master appointed by the Court, the Court, upon motion, or its own initiative, can among other actions: 1) amend the elements of the claim to conform with the information in the claim file or information obtained by the Court, or 2) terminate the claim.

5. Claimants failed to provide any evidence supporting a volume for claim 41H 30110527 that contradicts the DNRC's assertion of a volume of 2.75 acre-feet in accordance with DNRC guidelines for the purpose. Due to Claimants failure to provide any evidence, it is just to modify the claim's volume to 2.75 acre-feet.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, the changes recommended above in the Findings of Fact should be adopted for claim 41H 152481-00 and 41H 30110527.

Post Decree Abstracts of Water Rights Claims are served with the Report to confirm that the recommendations have been made in the State's centralized water right record system.

Julia J. Nordlund
Senior Water Master

Service via USPS Mail:

Paul J Gaffney
PO Box 961
Bozeman, MT 59771-0961

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

Water Right Number: 41H 152481-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: PAUL J GAFFNEY
PO BOX 961
BOZEMAN, MT 59771 0961

Priority Date: DECEMBER 31, 1920

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 30.00 GPM

Volume: 1.50 AC-FT

Households: 2

Maximum Acres: 4.00

Source Name: SPRING, UNNAMED TRIBUTARY OF BEAR CREEK

Source Type: GROUNDWATER

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	36	2S	6E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

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	4.00		SENW	36	2S	6E	GALLATIN

Total: 4.00

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

Water Right Number: 41H 30110527 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: PAUL J GAFFNEY
PO BOX 961
BOZEMAN, MT 59771 0961

Priority Date: DECEMBER 31, 1963

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 20.00 GPM

Volume: 2.75 AC-FT

Source Name: GROUNDWATER

Source Type: GROUNDWATER

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		N2SE	36	2S	6E	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	0.50		N2SE	36	2S	6E	GALLATIN

Total: 0.50