

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

* * * * *

CLAIMANT: Shade Tree Acres Plat #1 Assn

CASE 41H-0783-R-2021

41H 114966-00

41H 114967-00

41H 114969-00

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 rights claims 41H 114966-00, 41H 114967-00, and 41H 114969-00, owned by SHADE TREE ACRES PLAT #1 ASSN, 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 consolidated the water rights claims into Water Court case 41H-0783-R-2021 and set filing deadlines for the claim's owner to contact and work with DNRC and for DNRC to file a memorandum with the Water Court pursuant to § 85-2-248(5), MCA.

The claims' owner, SHADE TREE ACRES PLAT #1 ASSN, did not contact DNRC. On August 19, 2021, DNRC filed a Memorandum (DNRC Memo), including DNRC's recommendations for resolving the issue remarks, with the court.

The Water Court presently resolves the issues in this case.

ISSUES

1. *Whether a preponderance of the evidence supports: modifying the means of diversion associated with Point of Diversion ID No. 1 for water rights claims 41H 114966-00 and 41H 114967-00 from "multiple" to headgate; and modifying Point of Diversion ID No. 2 to reflect the diversion is a secondary diversion.*

2. *Whether a preponderance of the evidence supports modifying the period of use for water right claim 41H 114967-00.*

3. *Whether a preponderance of the evidence supports modifying the claimed place of use, maximum acres irrigated, volume, and/or flow rate for water right claim 41H 114969-00.*

4. *Whether the Water Court corrects the legal land description identifying Place of Use ID No. 1 associated with water right claim 41H 114969-00 consistent with information in the DNRC Memo.*

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.

The Water Court may correct a clerical mistake found in a judgment, order, or other part of the record on motion or on its own, with or without notice. Rule 60(a), M.R.Civ.P.

DISCUSSION

1. *Whether a preponderance of the evidence supports: modifying the means of diversion associated with Point of Diversion ID No. 1 for water rights claims 41H 114966-00 and 41H 114967-00 from “multiple” to headgate; and modifying Point of Diversion ID No. 2 to reflect the diversion is a secondary diversion.*

Water rights claims 41H 114966-00 and 41H 114967-00 are decreed stock claims for surface water from the West Gallatin River in Gallatin County, Montana. There are two primary points of diversion associated with the water rights claims: (1) “MULTIPLE” diversion means divert water from the source into Baker Creek in the SESESW of Section 9, Township 1S, Range 4E, Gallatin County; and (2) “MULTIPLE” diversion means divert water from the source into Baker Creek Ditch in the SWSW of Section 4, Township 1S, Range 4E, Gallatin County. However, issue remarks appearing on water rights claims 41H 114966-00 and 41H 114967-00 state: “POINT OF DIVERSION #2 APPEARS TO BE A DOWN DITCH DIVERSION OUT OF BAKER CREEK AND SHOULD NOT BE REPRESENTED AS A PRIMARY POD. MEANS OF DIVERSION FOR POINT OF DIVERSION #1 SHOULD BE HEADGATE.”

The DNRC Memo states:

While a down-ditch diversion is not an element which would typically be present on an abstract for a claim, Baker Creek presents a somewhat unique scenario where the creek itself is regulated by a headgate on the West Gallatin River. The down ditch diversion, in this case, is a critical element and necessary to ensure the accurate administration of water.

In order to resolve this issue remark, DNRC believes Point of Diversion #2 should be changed to a Secondary Point of Diversion and remain on the abstract as such. The Means of Diversion for Point of Diversion #1 should be modified on the abstract to read Headgate.

The Baker Creek Enforcement Project maps reference the Secondary Point of Diversion as ‘WGR 144.5’ which is included in the Water Commissioner’s Report for this claim.

A preponderance of the evidence supports modifying the means of diversion associated with Point of Diversion ID No. 1 for both water rights claims 41H 114966-00 and 41H 114967-00 from “MULTIPLE” to “HEADGATE.” A preponderance of the evidence further supports reflecting Point of Diversion ID No. 2 associated with water rights claims 41H 114966-00 and 41H 114967-00 as a secondary diversion on the claims’ decree abstracts, consistent with the issue remarks, DNRC Memo, and Baker Creek Enforcement Project maps.

2. *Whether a preponderance of the evidence supports modifying the period of use for water right claim 41H 114967-00.*

An additional issue remark appearing on the preliminary decree abstract for water right claim 41H 114967-00 states: “THIS STOCK CLAIM HAS A MULTIPLE USE RELATIONSHIP WITH IRRIGATION RIGHTS 41H 9376-00 & 41H 210856-00 WHOSE PERIOD OF USE IS APRIL 25-OCTOBER 9.” The preliminary decree abstract for the water right claim currently indicates the claim’s period of use is year-round.

The DNRC Memo recommends the Water Court to modify the claim’s period of use consistent with the periods of use for decreed multiple-use water rights 41H 9376-00 and 41H 210856-00, “based on the same decreed water right.”

The court’s review of the decree attached to the Original Statement of Claim does not provide evidence of the claim’s historical period of use. Furthermore, it is possible for multiple-use claims to have differing periods of use, particularly given the purpose of water right claim 41H 114967-00 is for stock and the purpose of water rights claims 41H 9376-00 and 41H 210856-00 is for irrigation. Without additional evidence, the court affords prima facie status to the period of use originally claimed—JANUARY 1 to DECEMBER 31. DNRC has not met its burden by a preponderance of the evidence. The issue remark shall be removed and the period of use shall remain as it appeared on the preliminary decree abstract in the preliminary decree.

3. *Whether a preponderance of the evidence supports modifying the claimed place of use, maximum acres irrigated, volume, and/or flow rate for water right claim 41H 114969-00.*

Water right claim 41H 114969-00 received the following DNRC issue remarks:

THE CLAIMED PLACE OF USE AND ACRES IRRIGATED MAY BE QUESTIONABLE. REVIEW OF THE AVAILABLE DATA APPEARS TO INDICATE 130.00 ACRES IRRIGATED.

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE. THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE.

Water right claim 41H 114969-00 is a decreed sprinkler/flood-irrigation claim for surface water from the West Gallatin River in Gallatin County. The claim's preliminary decree abstract states the claim is for use on 161 maximum acres utilizing a 309.7 gallons-per-minute (GPM) flow rate.

The DNRC Memo states:

Aerial imagery from 1979 appears to show only 130.0 acres irrigated, while the WRS photos appear to show merely 88.0 total acres irrigated. Given the variability in available data sources, and the changeability of the river channel of the West Gallatin River which bounds this irrigated acreage, DNRC is currently hesitant to provide a map which delineates variable, historical irrigated acreage without input from the claimant.

Regarding the flow rate and volume issue remarks, the DNRC Memo states:

DNRC is hesitant to provide recommendations to the above listed issue remarks due to the previous filings by the parties to Water Court Case 41H-109 which addressed Volume and Flow Rate, including an agreement by the parties on the division of Flow Rate (p. 49 of claim file, filed Dec. 24, 1997). The previous Order indicates the Volume quantification should be removed entirely per MCA 85-2-234 (6)(b)(i).

As such, the Water Court affords prima facie status to the originally claimed elements and does not modify elements previously examined by the Water Court at this time. The maximum acres irrigated, flow rate, and volume for water right claim 41H 114969-00 shall remain as they appeared in the preliminary decree. The issue remarks regarding these elements are resolved and shall be removed.

4. *Whether the Water Court corrects the legal land description identifying Place of Use ID No. 1 associated with water right claim 41H 114969-00 consistent with information in the DNRC Memo.*

The preliminary decree abstract for water right claim 41H 114969-00 indicates Place of Use ID No. 1 is in the N2SW of Section 5, Township 1S, Range 4E, Gallatin County. However, the DNRC Memo states this is incorrect. “The actual Place of Use [ID No. 1], per the original claimant map and ownership, appears to be the **N2SE** of Section 5, Township 1S, Range 4E, Gallatin County. After reviewing the record, the court agrees with DNRC’s analysis and corrects the legal land description for Place of Use Id No. 1 associated with water right claim 41H 114969-00 from the N2SW to the N2SE of Section 5, Township 1S, Range 4E, Gallatin County, accordingly.

RECOMMENDATIONS

This Water Master recommends the Water Court to remove the resolved issue remarks; to modify the means of diversion for water rights claims 41H 114966-00 and 41H 144967-00 from “MULTIPLE” to “**HEADGATE**”; to reflect POD ID No. 2 associated with water rights claims 41H 114966-00 and 41H 144967-00 as a secondary diversion; and to correct the legal land description identifying Place of Use No. 1 associated with water right claim 41H 114969-00 from the N2SW to the **N2SE** of Section 5, Township 1S, Range 4E, Gallatin County.

The court attaches post-decree abstracts for each water right claim to this Master’s Report to reflect the changes made, as well as the DNRC Memo for future reference.

Kirsa Shelkey
Water Master
she/her/hers

Service via USPS Mail:

Shade Tree Acres Plat #1 Assn
% Betty Ann Conrad
1891 State Coach Trail Rd
Manhattan, MT 59741

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

41H-0783-R-2021

August 19, 2021

GREG GIANFORTE
GOVERNOR

STATE OF MONTANA

WATER RESOURCES DIVISION-BOZEMAN REGIONAL OFFICE
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2273 BOOT HILL COURT
SUITE 110
BOZEMAN, MONTANA 59715

MEMORANDUM

DATE: August 19, 2021

CASE HEADING: **CASE:** 41H-0783--R-2021
CLAIMS: 41H 114966-00
41H 114967-00
41H 114969-00

TO: Kirsia Shelkey
Water Master

FROM: Kara Huyser
Water Resource Specialist

CLAIMANT(S): Shade Tree Acres Plat #1 Assn

Introduction:

On May 21, 2021, the Water Court ordered the claimant to confer with the DNRC Bozeman Regional Office to resolve issue remarks placed as a result of DNRC claims examination and reexamination rules. The Water Court further requested DNRC provide a memorandum discussing the results of that conference and submit recommendations for the resolution of said remarks. DNRC received no contact from the claimant.

Materials Reviewed:

- Information in claim files
- USDA Aerial Imagery 1979, 279-13L and 279-14L
- USGS Topographic Quadrangle: Manhattan, 1987

Discussion:**41H 114966-00 & 41H 114967-00, Stock; WEST GALLATIN RIVER:**

The two claims listed above share the same following issue remark, which will be addressed jointly.

Point of Diversion Issue Remark, PDIS:

POINT OF DIVERSION #2 APPEARS TO BE A DOWN DITCH DIVERSION OUT OF BAKER CREEK AND SHOULD NOT BE REPRESENTED AS A PRIMARY POD. MEANS OF DIVERSION FOR POINT OF DIVERSION #1 SHOULD BE HEADGATE.

The issue above was originally raised in the process of creating the Baker Creek Enforcement Project by DNRC. While a down-ditch diversion is not an element which would typically be present on an abstract for a claim, Baker Creek presents a somewhat unique scenario where the creek itself is regulated by a headgate on the West Gallatin River. The down ditch diversion, in this case, is a critical element and necessary to ensure the accurate administration of water.

In order to resolve this issue remark, DNRC believes Point of Diversion #2 should be changed to a Secondary Point of Diversion and remain on the abstract as such. The Means of Diversion for Point of Diversion #1 should be modified on the abstract to read Headgate.

The Baker Creek Enforcement Project maps reference the Secondary Point of Diversion as 'WGR 144.5' which is included in the Water Commissioner's Report for this claim.

41H 114967-00, Stock; WEST GALLATIN RIVER:

Period of Use Issue Remark, PEIS:

THIS STOCK CLAIM HAS A MULTIPLE USE RELATIONSHIP WITH IRRIGATION RIGHTS 41H 9376-00 & 41H 210856-00 WHOSE PERIOD OF USE IS APRIL 25-OCTOBER 9.

The current abstract lists the Period of Use for this claim as January 1 to December 31. Without more information from the claimant, DNRC believes the resolution to this issue remark is modifying the Period of Use to match the original decreed Period of Use as well as to match the listed multiple use claims which are based on the same decreed water.

41H 114969-00, Irrigation; WEST GALLATIN RIVER:

Place of Use Issue Remark, P289:

THE CLAIMED PLACE OF USE AND ACRES IRRIGATED MAY BE QUESTIONABLE. REVIEW OF THE AVAILABLE DATA APPEARS TO INDICATE 130.00 ACRES IRRIGATED.

Aerial imagery from 1979 appears to show only 130.0 acres irrigated, while the WRS photos appear to show merely 88.0 total acres irrigated. Given the variability in available data sources, and the changeability of the river channel of the West Gallatin River which bounds this irrigated acreage, DNRC is currently hesitant to provide a map which delineates variable, historical irrigated acreage without input from the claimant.

DNRC found a discrepancy in the original claim documents which was not found during examination, nor during the objection period. Place of Use #1 is listed as N2SW of Section 5, Township 1 South,

Range 4 East, Gallatin County. The actual Place of Use, per original claimant map and ownership, appears to be the N2SE of Section 5, Township 1 South, Range 4 East, Gallatin County.

Volume Issue Remark, V55:

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

Flow Rate Issue Remark, F180:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE. THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE.

DNRC is hesitant to provide recommendations to the above listed issue remarks due to the previous filings by the parties to Water Court Case 41H-109 which addressed Volume and Flow Rate, including an agreement by the parties on the division of Flow Rate (p. 49 of claim file, filed Dec. 24, 1997). The previous Order indicates the Volume quantification should be removed entirely per MCA 85-2-234 (6)(b)(i).

By: /s/ Kara Huyser August 19, 2021
Kara Huyser, Water Resource Specialist

REVIEWED:

By: /s/ Kerri Strasheim August 19, 2021
Kerri Strasheim, Bozeman Regional Manager

Electronic Service:

Kirsa Shelkey
Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
Electronic filing: watercourt@mt.gov

Service via US Postal Service:

Shade Tree Acres Plat #1 Assn
% Betty Ann Conard
1891 Stage Coach Trail Rd
Manhattan, MT 59741

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

Water Right Number: 41H 114966-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SHADE TREE ACRES PLAT #1 ASSN
% BETTY ANN CONARD
1891 STAGE COACH TRAIL RD
MANHATTAN, MT 59741

Priority Date: APRIL 1, 1867

Type of Historical Right: DECREEED

Purpose (Use): STOCK

Flow Rate: NO FLOW RATE HAS BEEN DECREEED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

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 Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESESW	9	1S	4E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: BAKER CREEK

A SECONDARY DOWN-DITCH DIVERSION DIVERTS WATER OUT OF BAKER CREEK IN THE SWSW OF SEC 4 TWP 1S RGE 4E GALLATIN COUNTY

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			N2SE	5	1S	4E	GALLATIN
2			SESE	5	1S	4E	GALLATIN
3			SWSW	4	1S	4E	GALLATIN

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

114966-00 114969-00

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

Water Right Number: 41H 114967-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SHADE TREE ACRES PLAT #1 ASSN
% BETTY ANN CONARD
1891 STAGE COACH TRAIL RD
MANHATTAN, MT 59741

Priority Date: JUNE 15, 1897

Type of Historical Right: DECREEED

Purpose (Use): STOCK

Flow Rate: NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

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 Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESESW	9	1S	4E	GALLATIN

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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			N2SE	5	1S	4E	GALLATIN
2			SESE	5	1S	4E	GALLATIN
3			SWSW	4	1S	4E	GALLATIN

Remarks:

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114967-00 210856-00 9376-00

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

Water Right Number: 41H 114969-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SHADE TREE ACRES PLAT #1 ASSN
% BETTY ANN CONARD
1891 STAGE COACH TRAIL RD
MANHATTAN, MT 59741

Priority Date: APRIL 1, 1867

Type of Historical Right: DECREEED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 309.70 GPM

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT
PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 161.00

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 Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESESW	9	1S	4E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: BAKER CREEK

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	83.00		N2SE	5	1S	4E	GALLATIN
2	38.00		SESE	5	1S	4E	GALLATIN
3	40.00		SWSW	4	1S	4E	GALLATIN

Total: 161.00

Remarks:

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114966-00 114969-00

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

41H-0783-R-2021

August 19, 2021

GREG GIANFORTE
GOVERNOR

STATE OF MONTANA

WATER RESOURCES DIVISION-BOZEMAN REGIONAL OFFICE
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BOZEMAN, MONTANA 59715

MEMORANDUM

DATE: August 19, 2021

CASE HEADING: **CASE: 41H-0783--R-2021**
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41H 114967-00
41H 114969-00

TO: Kirsia Shelkey
Water Master

FROM: Kara Huyser
Water Resource Specialist

CLAIMANT(S): Shade Tree Acres Plat #1 Assn

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In order to resolve this issue remark, DNRC believes Point of Diversion #2 should be changed to a Secondary Point of Diversion and remain on the abstract as such. The Means of Diversion for Point of Diversion #1 should be modified on the abstract to read Headgate.

The Baker Creek Enforcement Project maps reference the Secondary Point of Diversion as 'WGR 144.5' which is included in the Water Commissioner's Report for this claim.

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THIS STOCK CLAIM HAS A MULTIPLE USE RELATIONSHIP WITH IRRIGATION RIGHTS 41H 9376-00 & 41H 210856-00 WHOSE PERIOD OF USE IS APRIL 25-OCTOBER 9.

The current abstract lists the Period of Use for this claim as January 1 to December 31. Without more information from the claimant, DNRC believes the resolution to this issue remark is modifying the Period of Use to match the original decreed Period of Use as well as to match the listed multiple use claims which are based on the same decreed water.

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Place of Use Issue Remark, P289:

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Aerial imagery from 1979 appears to show only 130.0 acres irrigated, while the WRS photos appear to show merely 88.0 total acres irrigated. Given the variability in available data sources, and the changeability of the river channel of the West Gallatin River which bounds this irrigated acreage, DNRC is currently hesitant to provide a map which delineates variable, historical irrigated acreage without input from the claimant.

DNRC found a discrepancy in the original claim documents which was not found during examination, nor during the objection period. Place of Use #1 is listed as N2SW of Section 5, Township 1 South,

Range 4 East, Gallatin County. The actual Place of Use, per original claimant map and ownership, appears to be the N2SE of Section 5, Township 1 South, Range 4 East, Gallatin County.

Volume Issue Remark, V55:

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

Flow Rate Issue Remark, F180:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE. THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE.

DNRC is hesitant to provide recommendations to the above listed issue remarks due to the previous filings by the parties to Water Court Case 41H-109 which addressed Volume and Flow Rate, including an agreement by the parties on the division of Flow Rate (p. 49 of claim file, filed Dec. 24, 1997). The previous Order indicates the Volume quantification should be removed entirely per MCA 85-2-234 (6)(b)(i).

By: /s/ Kara Huyser August 19, 2021
Kara Huyser, Water Resource Specialist

REVIEWED:

By: /s/ Kerri Strasheim August 19, 2021
Kerri Strasheim, Bozeman Regional Manager

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