

41H-0851-R-2021

September 3, 2021

Montana Water Court

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

* * * * *

CLAIMANT: Dykstra Family Limited Partnership

CASE 41H-0851-R-2021
41H 27652-00
41H 30508-00

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 27652-00 and 41H 30508-00, owned Dykstra Family Limited Partnership, 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. Specifically, water right claim 41H 27652-00 received an issue remark regarding the claimed flow rate.

The Water Court consolidated the water rights claims into Water Court case 41H-0851-R-2021 and set a filing deadline for the claim's owner to file information with the court evidencing the historically accurate flow rate for water right claim 41H 27652-00. The claim's owner did not file information with the Water Court by the deadline.

The Water Court presently resolves the issue in this case.

ISSUES

1. *Whether a preponderance of the evidence supports modifying the flow rate for water right 41H 27652-00 from 75 GPM to 50 GPM.*

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.

DNRC's express duty in the adjudication process is to identify potential issues with water rights and to provide factual analysis to the water court prior to decree issuance. Rules 1(b) and 2(a), W.R.C.E.R. The Water Court is not bound by the W.R.C.E.R. or the technical assistance provided by the DNRC. Rules 1(b) and 2(a), W.R.C.E.R.

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 flow rate for water right 41H 27652-00 from 75 GPM to 50 GPM.*

Water right claim 41H 27652-00 is a filed sprinkler-irrigation claim for groundwater from a well in Gallatin County, Montana. An issue remark appearing on the claim's preliminary decree abstract states: "THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A FLOW RATE OF 50 [gallons-per-minute] GPM."

While the original statement of claim indicates the flow rate is 75 GPM, the attached notice of completion form indicates the flow rate associated with the well is 50 GPM.

The Water Court's previous order asked Dykstra Family Limited Partnership to file information with the Water Court supporting the claimed 75 GPM flow rate. The order stated: "If Dykstra Family Limited Partnership does not file information with the court by the deadline, the Water Court may reduce the claim's flow rate consistent with DNRC's issue remark."

A preponderance of the evidence supports modifying the claim's flow rate from 75 GPM to 50 GPM consistent with the notice of completion form attached to the claimant's original statement of claim and DNRC's issue remark.

Water right claim 41H 30508-00 additionally received an issue remark providing notice DNRC modified elements of the claim during reexamination of the basin. The issue remark states if no objections are filed to the claim, the remark will be removed. The claim did not receive objections, no proceedings are required, and the issue remark shall be removed.

RECOMMENDATION

This Water Master recommends the Water Court to remove the resolved issue remarks and to modify the flow rate for water right claim 41H 27652-00 from 75 GPM to **50 GPM**. The Water Court attaches post-decree abstracts for the water rights claims to the Master's Report.

Kirsa Shelkey
Water Master
she/her/hers

Service via USPS Mail:

Dykstra Family Limited Partnership
PO Box 11726
Bozeman, MT 59719

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

Water Right Number: 41H 27652-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: DYKSTRA FAMILY LIMITED PARTNERSHIP
PO BOX 11726
BOZEMAN, MT 59719 1726

Priority Date: MAY 23, 1966

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 50.00 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: 12.50

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		SESWNE	11	2S	5E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: WELL

Period of Use: APRIL 1 TO OCTOBER 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	5.00		SESWNE	11	2S	5E	GALLATIN
2	7.50		E2W2NE	11	2S	5E	GALLATIN

Total: 12.50

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.

27652-00

27653-00

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

Water Right Number: **41H 30508-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DYKSTRA FAMILY LIMITED PARTNERSHIP
PO BOX 11726
BOZEMAN, MT 59719 1726

Priority Date: JULY 1, 1894

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.23 CFS

***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: 100.00

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		NWSEW	14	2S	4E	GALLATIN

Period of Diversion: MAY 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: SPAIN-FERRIS DITCH

Period of Use: MAY 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	50.00		N2	25	1S	4E	GALLATIN
2	50.00		S2	25	1S	4E	GALLATIN
Total:	100.00						