

Montana Water Court
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ELECTRONICALLY FILED

41H-0873-R-2020

September 8, 2021

Montana Water Court

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

CLAIMANTS: Ana Byrne; James Byrne; Russo Properties LLC

CASE 41H-0873-R-2020
41H 154083-00

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 154083-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with an issue remark received during the Department of Natural Resources and Conservation's (DNRC) review in preparation of the preliminary decree. The issue remark states: "POINT OF DIVERSION NO.2 APPEARS TO BE

INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE N2NENE SEC 34 TWP 2S RGE 4E GALLATIN COUNTY.”

On January 6, 2021, Lauren Reich filed a status report and unopposed request for an extension, which is hereby granted. The Water Court reset the previous deadline in Water Court case 41H-0873-R-2020 to March 11, 2021. The court did not receive information from the claim’s owner by the deadline.

The Water Court presently resolves the issue in this case.

ISSUES

1. *Whether a preponderance of the evidence supports correcting the legal land description for Point of Diversion ID No. 2 associated with water right claim 41H 154083-00.*

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.

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 correcting the legal land description for Point of Diversion ID No. 2 associated with water right claim 41H 154083-00.*

Water right claim 41H 154083-00 is a filed sprinkler-irrigation right for waste and seepage groundwater in Gallatin County, Montana. The claim’s preliminary decree abstract currently states point of diversion ID No. 2 is a pump in the N2NENE of Section 34, Township 4S, Range 4E, Gallatin County. However, an issue remark appearing on the claim’s preliminary decree abstract states: “POINT OF DIVERSION NO. 2 APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE N2NENE SEC 34 TWP 2S RGE 4E GALLATIN COUNTY” Reich filed information confirming the legal land description for point of diversion ID No. 2 recommended by DNRC’s issue remark.

A preponderance of the evidence supports correcting the legal land description for point of diversion ID No. 2 from the N2NENE of Section 34, Township 4S, Range 4E, Gallatin County, to the N2NENE of Section 34, Township 2S, Range 4E, Gallatin County to reflect accurate historical use.

RECOMMENDATIONS

This Water Master recommends the Water Court to remove the resolved issue remark and to modify the legal land description for point of diversion ID No. 2 from the N2NENE of Section 34, Township 4S, Range 4E, Gallatin County, to the N2NENE of Section 34, Township 2S, Range 4E, Gallatin County. The Water Court attaches a post-decree abstract for water right claim 41H 154083-00 to this Master’s Report to reflect the changes made.

Kirsa Shelkey
Water Master
she/her/hers

Service via USPS Mail:

Potential Owners:
Lauren Reich
Charles Graham
11521 Axtell Gateway Rd

Bozeman, MT 59718

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

Water Right Number: 41H 154083-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: CHARLES F GRAHAM
11521 AXTELL GATEWAY RD
BOZEMAN, MT 59718 9129
LAUREN A REICH
11521 AXTELL GATEWAY RD
BOZEMAN, MT 59718 9129

Priority Date: JULY 18, 1933

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

***Flow Rate:** 123.42 GPM

FLOW RATE CLAIMED IS AN UNDIVIDED FIVE-EIGHTY EIGHTHS INTEREST IN FIVE CUBIC FEET PER SECOND.

***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: 11.00

***Source Name:** WASTE & SEEPAGE, UNNAMED TRIBUTARY OF WEST GALLATIN RIVER

Source Type: GROUNDWATER

***Source Name:** UNNAMED TRIBUTARY OF WEST GALLATIN RIVER

Source Type: GROUNDWATER

SOURCE ALSO KNOWN AS MONFORTON DRAIN DITCH

***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		NWNW	4	3S	4E	GALLATIN

***Source Name:** WASTE & SEEPAGE, UNNAMED TRIBUTARY OF WEST GALLATIN RIVER

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: PUMP

2		N2NENE	34	2S	4E	GALLATIN
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***Source Name:** UNNAMED TRIBUTARY OF WEST GALLATIN RIVER

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: PUMP

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	5.50		S2SENE	34	2S	4E	GALLATIN
2	5.50		N2NESE	34	2S	4E	GALLATIN
Total:	11.00						

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.

154083-00

154084-00