

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

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CLAIMANT: Babcock Development LLC

CASE 41H-0930-R-2021  
41H 30115298

**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 30115298, owned by Babcock Development LLC, 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, an issue remark appearing on the claim's preliminary decree abstract states: "NO PRIORITY DATE WAS CLAIMED."

The Water Court consolidated water right claim 41H 30115298 into Water Court case 41H-0930-R-2021 and set a filing deadline for the claim's owner to file information evidencing the claim was beneficially used before July 1, 1973. The claim's owner did not file information with the court. The Water Court issued a show cause order indicating it would dismiss the claim for lack of jurisdiction if the claim's owner could not file information evidencing the claim was beneficially used before July 1, 1973, by the show-cause deadline. Again, the court did not receive information from the claim's owner.

The Water Court presently resolves the issue in this case.

### ISSUE

1. *Whether the Water Court dismisses water right claim 41H 30115298.*

### APPLICABLE LAW

"The Montana Water Court has a statutory obligation and the exclusive authority to adjudicate claims of existing water rights." Rule 1(a), W.R.Adj.R. An existing water right means the water right was beneficially used prior to July 1, 1973. The Water Court does not have jurisdiction over post-July 1, 1973 water rights claims. 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.

### DISCUSSION

1. *Whether the Water Court dismisses water right claim 41H 30115298.*

Water right claim 41H 30115298 is a domestic use claim for groundwater from a well in Gallatin County, Montana. An issue remark appearing on the claim's preliminary decree abstract states: "NO PRIORITY DATE WAS CLAIMED." Indeed, the priority date appears blank on the July 3, 2017 Statement of Claim for Existing Water Right form. DNRC's Examination Worksheet indicates the "plat in claim file is dated 1974." The Water Court does not have jurisdiction over post-July 1, 1973 water rights claims.

The Water Court did not receive information from the claim's owner evidencing the claim was beneficially used before July 1, 1973. The court's previous order stated: "If the claim's owner does not file information indicating the claim reflects an existing water right,

the Water Court will dismiss the water right claim. DNRC has jurisdiction over water rights beneficially used for the first time after July 1, 1973.”

The Water Court dismisses water right claim 41H 30115298 accordingly.

#### RECOMMENDATIONS

This Water Master recommends the Water Court to dismiss water right claim 41H 30115298. The court attaches a post-decree abstract to this Master’s Report to reflect the changes made.

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Kirsa Shelkey  
Water Master  
*she/her/hers*

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

Babcock Development LLC  
PO Box 6507  
Bozeman, MT 59771

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

**Water Right Number:**      **41H 30115298**      STATEMENT OF CLAIM

**Version:**      2 -- POST DECREE

**Status:**   **DISMISSED**

**Owners:**                      BABCOCK DEVELOPMENT LLC  
                                        P.O. BOX 6507  
                                        BOZEMAN, MT 59771 6507

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):**                      DOMESTIC

**Flow Rate:**

**Volume:**

**Source Name:**                      GROUNDWATER

**Source Type:**                      GROUNDWATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.