

41H-0943-R-2021

September 27, 2021

Montana Water Court

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

CLAIMANT: Barnard Land & Livestock LP

CASE 41H-0943-R-2021
41H 163405-00

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 163405-00, owned by Barnard Land & Livestock LP, appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with an excessive-volume issue remark requiring resolution.

The Water Court consolidated the water right claim into Water Court case 41H-0943-R-2021 and set a filing deadline for Barnard Land & Livestock LP to file information with the court evidencing the historically accurate volume for water right claim 41H 163405. Barnard Land & Livestock LP 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 volume for water right claim 41H 163405-00.*

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.

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 volume for water right claim 41H 163405-00.*

Water right claim 41H 163405-00 is a sprinkler-irrigation use claim for groundwater pumped from a spring in Gallatin County, Montana. The volume claimed is 126 acre-feet (AC-FT). An issue remark appearing on the claim's preliminary decree abstract states: "THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 64 TIMES THE CAPACITY OF THE RESERVOIR."

Beneficial use is the cornerstone of western water law jurisprudence. *In re Adjudication of Existing Rights to the Use of all Water (Bean Lake III)*, 2002 MT 216, ¶ 10; *Worden v. Alexander*, 108 Mont. 208, 216, 90 P.2d 160, 163 (1939). DNRC developed guidelines and reviewed water rights claims for excessive volumes due to widespread overclaiming by claimants on their original statements of claim. However, there are instances where water rights owners beneficially use water in excess of DNRC's volume guideline consistent with historical use.

In this case, there is not sufficient evidence in the record to overcome the prima facie status this court affords to the originally claimed volume. Therefore, the court removes the resolved issue remark and decrees the claim's volume as it appeared in the preliminary decree.

The water right claim further received issue remarks providing notice that elements of the claim were modified during reexamination of the basin. The issue remarks state if no objections are filed to the claim, the issue remarks will be removed. The claim did not receive objections. No proceedings are required, and the issue remarks shall be removed

RECOMMENDATION

This Water Master recommends the Water Court to remove the resolved issue remarks. The Water Court attaches a post-decree abstract for the water right claim to the Master's Report.

Kirsa Shelkey
Water Master
she/her/hers

Service via USPS Mail:

Barnard Land & Livestock LP
PO Box 362
Bozeman, MT 59771

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

Water Right Number: 41H 163405-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BARNARD LAND & LIVESTOCK LP
PO BOX 362
BOZEMAN, MT 59771 0362

Priority Date: JUNE 12, 1964

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 126.00 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 63.00

Source Name: SPRING, UNNAMED TRIBUTARY OF EAST GALLATIN RIVER

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		NESWSE	10	2S	6E	GALLATIN

Period of Diversion: MAY 15 TO OCTOBER 15

Diversion Means: PUMP

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESWSE	10	2S	6E	GALLATIN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 13.00 FEET

Depth: 10.00 FEET

Surface Area: 0.70 ACRES

Capacity: 2.80 ACRE-FEET

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	10.00		S2NESE	10	2S	6E	GALLATIN
2	15.00		S2NWSE	10	2S	6E	GALLATIN

3	38.00	SWSE	10	2S	6E	GALLATIN
Total:	63.00					