

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

ELECTRONICALLY FILED

41H-0527-R-2022

July 26, 2022

Montana Water Court

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

* * * * *

CLAIMANTS: Brian R. Chisdak; Jami L. Chisdak; Charles
Gawarkiewicz; Erin O'Connor

CASE 41H-0527-R-2022
41H 115662-00
41H 30071957

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 if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Pursuant to Water Right Adjudication Rule 23, written objections to a Master's Report must be filed within **10 days** of the date the Report was filed. If this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

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 this 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

Water right claims 41H 115662-00 and 41H 30071957 appeared in the Preliminary Decree for the Gallatin River ("Basin 41H") with issue remarks resulting from pre-decree examination by the Montana Department of Natural Resources and Conservation ("DNRC"). To resolve the issue remarks, the Water Court consolidated the claim into case 41H-0527-R-2022.

FINDINGS OF FACT

1. Claims 41H 115662-00 and 41H 30071957 appeared in the Basin 41H Preliminary Decree with the following issue remark:

THE CLAIMED MEANS OF DIVERSION CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
2. The means of diversion of claim 41H 115662-00 are listed as: PUMP/HEADGATE W/ DITCH OR PIPELINE. The means of diversion of claim 41H 30071957 are listed as: MULTIPLE.
3. On May 17, 2022, the Water Court issued an Order Setting Filing Deadline for Brian R. Chisdak, Jami L. Chisdak, Charles Gawarkiewicz, and Erin O'Connor ("Claimants") to file evidence to clarify the means of diversion and resolve the issue remarks no later than July 12, 2022. The Order stated that if Claimants did not file evidence by the deadline, the means of diversion would default to those listed on the Statements of Claim.

4. The July 12, 2022, filing deadline in the Water Court Order passed and, as of the filing of this Master's Reports, Claimants did not file evidence to resolve the issue remarks.
5. The following clarifications can be made to the claim 41H 115662-00 means of diversion:
 - a. POD 1: PUMP
 - b. POD 2: HEADGATE
 - c. POD 3: PUMP
6. The following clarifications can be made to the claim 41H 30071957 means of diversion:
 - a. POD 1: PUMP
 - b. POD 2: HEADGATE
 - c. POD 3: PUMP
7. The issue remarks on claims 41H 115662-00 and 41H 30071957 can be resolved and removed.

CONCLUSIONS OF LAW

1. The Water Court has exclusive jurisdiction to determine the extent of all water rights in Montana as they existed prior to July 1, 1973. *In re Deadman's Basin Water Users Ass'n*, 2002 MT 15, ¶ 15; Section 3-7-501, MCA.
2. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248(2).
3. When resolving issue remarks, the Water Court must weigh the issue remark and the information resulting in the issue remark against the claimed water right. Section 85-2-247(2), MCA.
4. The Water Court is permitted to use information provided by DNRC, the statements of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims and resolve issue remarks. Section 85-2-231(2), MCA.

5. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie status may be overcome by a preponderance of the evidence showing that an element of the claim is incorrect. Section 85-2-227, MCA; 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.
6. If a claimant fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Court, the Court may upon motion or its own initiative, issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R.
7. Sanctions for a claimant’s failure to comply with an order issued by the Court in its review of issue remarks include: 1) amending elements of the claim to conform with information in the claim file, 2) amending element of the claim to conform with information obtained by the court, or 3) removing the issue remark. Section 85-2-248(9), MCA; Rule 22, W.R.Adj.R.
8. Claimants failed to respond to the Court issued Order to file evidence resolving the issue remarks on claims 41H 115662-00 and 41H 30071957. Therefore, it is proper for the Court to amend the claims and resolve the issue remarks using information in the claim files.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, the changes recommended above should be adopted for claims 41H 115662-00 and 41H 30071957. Post-decree abstracts of the claims are served with this Report to confirm the changes have been made in the State’s centralized water right record system.

Julia J. Nordlund
Senior Water Master

Service via USPS Mail:

Brian R. Chisdak
Jami L. Chisdak
6355 Forswall Rd
Belgrade, MT 59714-9387

Charles Gawarkiewicz
Erin O'Connor
6227 Forswall Rd
Belgrade, MT 59714-8675

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H

Water Right Number: 41H 115662-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

***Owners:** CHARLES GAWARKIEWICZ
6227 FORSWALL RD
BELGRADE, MT 59714 8675

ERIN OCONNOR
6227 FORSWALL RD
BELGRADE, MT 59714 8675

BRIAN R CHISDAK
6355 FORSWALL RD
BELGRADE, MT 59714 9387

JAMI L CHISDAK
6355 FORSWALL RD
BELGRADE, MT 59714 9387

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT MAY BE SPLIT INTO SEPARATE WATER RIGHTS AFTER FINAL DECREE UPON REQUEST OF THE OWNERS.

Priority Date: AUGUST 15, 1906

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 112.20 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:** 160.00

Source Name ROSS CREEK, SOUTH FORK

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		SESESE	13	1N	5E	GALLATIN
Period of Diversion:	APRIL 1 TO OCTOBER 1					
Diversion Means:	PUMP					
2		NWNENE	24	1N	5E	GALLATIN
Period of Diversion:	APRIL 1 TO OCTOBER 1					
Diversion Means:	HEADGATE					
3		SWNWNE	24	1N	5E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: PUMP

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	160.00		NW	19	1N	6E	GALLATIN
Total:	160.00						

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.

115662-00 30071957

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H

Water Right Number: 41H 30071957 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

CHARLES GAWARKIEWICZ
6227 FORSWALL RD
BELGRADE, MT 59714 8675

ERIN OCONNOR
6227 FORSWALL RD
BELGRADE, MT 59714 8675

BRIAN R CHISDAK
6355 FORSWALL RD
BELGRADE, MT 59714 9387

JAMI L CHISDAK
6355 FORSWALL RD
BELGRADE, MT 59714 9387

***Priority Date:** JUNE 1, 1868

***Type of Historical Right:** DECREED

***Purpose (use):** IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 336.36 GPM
(0.75 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:** 160.00

***Source Name** ROSS CREEK, SOUTH FORK

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		SESESE	13	1N	5E	GALLATIN
Period of Diversion:	APRIL 1 TO OCTOBER 1					
Diversion Means:	PUMP					
2		NWNENE	24	1N	5E	GALLATIN
Period of Diversion:	APRIL 1 TO OCTOBER 1					
Diversion Means:	HEADGATE					
3		SWSWNE	24	1N	5E	GALLATIN
Period of Diversion:	APRIL 1 TO OCTOBER 1					

Diversion Means: PUMP

***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	160.00		NW	19	1N	6E	GALLATIN
Total:	160.00						

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115662-00 30071957

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41H 115661-00.