

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

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CLAIMANTS: Phillip A. Egbert; Joyce P. Petre Revocable
Trust; Revx-328 LLC; **Shelle L. Egbert**

CASE 41H-0594-R-2022
41H 1927-00

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 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 claim 41H 1927-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with an issue remark resulting from pre-decree examination by the Montana Department of Natural Resources and Conservation (DNRC). The claim did not receive objections, counter-objections, or notices of intent to appear. To address the issue remark, the Water Court consolidated the claim into case 41H-0594-R-2022.

FINDINGS OF FACT

1. Claim 41H 1927-00 appeared in the Basin 41H Preliminary Decree with the following issue remark:
THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.
2. On March 12, 1980, Kermit A. Brant and Thelma M. Brant filed a Statement of Claim for Existing Water Rights for claim 41H 1927-00 and listed the point of diversion as NENE, Sec. 6, Twp. 1S, Rge. 6E, Gallatin County. However, after DNRC examination, the claim abstract appeared with the point of diversion listed as SENE, Sec. 6, Twp. 1S, Rge. 6E, Gallatin County.
3. On June 2, 2022, the Water Court issued an Order Setting Filing Deadline for Claimants Joyce P. Petre Revocable Trust, Phillip A. Egbert, Shelle L. Egbert, and REVX-328 LLC to file evidence clarifying the historical point of diversion.
4. On July 21, 2022, Phillip A. Egbert and Shelle L. Ebgert filed imagery and a map documenting the historical point of diversion as SENE, Sec. 6, Twp. 1S, Rge. 6E, Gallatin County. This evidence supports the point of diversion as currently listed on the claim abstract.
5. The claim 41H 1927-00 point of diversion should remain SENE, Sec. 6, Twp. 1S, Rge. 6E, Gallatin County and the issue remark can be 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). The Court has authority to resolve issue remarks when the claim file and available information provide a sufficient basis to do so. Section 85-2-248(3), MCA.
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. The Court is permitted to use information submitted by DNRC, the statement of claim, information from approved compacts, and any additional data obtained by the Court in the resolution of issue remarks. Section 85-2-231(2)(a), MCA.
4. 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.
5. Information in claim file and evidence submitted by Claimants Phillip A. Egbert and Shelle L. Egbert is sufficient to overcome the prima facie status of the Statement of Claim and resolve the point of diversion issue remark on claim 41H 1927-00.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court remove the point of diversion issue remark from claim 41H 1927-00. A Post Decree Abstract of Water Right Claim accompanies this Report to

confirm that the issue remark has been removed in the state's centralized water right record system.

Julia J. Nordlund
Senior Water Master

Service via USPS Mail:

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Shelle L. Egbert
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Bozeman, MT 59772-4264

Joyce P. Petre Revocable Trust
PO Box 174
Wilton, CT 06897

RE VX-328 LLC
PO Box 1031
Dillon, MT 59725-1031

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

Water Right Number: 41H 1927-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

PHILLIP A EGBERT
PO BOX 4264
BOZEMAN, MT 59772 4264

SHELLE L EGBERT
PO BOX 4264
BOZEMAN, MT 59772 4264

REX-328 LLC
PO BOX 1031
DILLON, MT 59725 1031

PETRE, JOYCE P REVOCABLE TRUST
PO BOX 174
WILTON, CT 06897

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT
MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE OWNERS.
12/21/201

Priority Date: DECEMBER 31, 1883

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 1.25 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: 140.00

Source Name BOSTWICK CREEK

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		SENE	6	1S	6E	GALLATIN

Period of Diversion: MAY 1 TO SEPTEMBER 15

Diversion Means: HEADGATE

Period of Use: MAY 1 TO SEPTEMBER 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	70.00		W2SE	6	1S	6E	GALLATIN

2	70.00	E2SW	6	1S	6E	GALLATIN
Total:	140.00					