

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

CLAIMANT: Jason Holland

CASE 41H-0663-R-2022
41H 25650-00

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 25650-00 appeared in the Preliminary Decree for the Gallatin River ("Basin 41H") with issue remarks resulting from pre-decree examination by the Department of Natural Resources and Conservation ("DNRC"). To resolve the issue remarks, the Water Court consolidated the claim into case 41H-0663-R-2022.

FINDINGS OF FACT

1. Harvey E. Carter filed the Statement of Claim for irrigation claim 41H 25650-00 on July 30, 1981, claiming 100 miner's inches of water from an unnamed East Gallatin River tributary for use on 40.00 total acres.
2. Claim 41H 25650-00 appeared in the Basin 41H Preliminary Decree with the following issue remarks:

THE DECREED PLACE OF USE AND ACRES IRRIGATED MAY BE QUESTIONABLE.
REVIEW OF AVAILABLE DATA APPEARS TO INDICATE FEWER ACRES HAVE BEEN IRRIGATED THAN PREVIOUSLY DECREED.
3. Pursuant to § 85-2-248(5), MCA, the Water Court ordered claimant Jason Holland to confer with the Bozeman Regional Office of the DNRC to resolve the foregoing issue remarks on claim 41H 25650-00.
4. Claimant Holland conferred with the DNRC Bozeman Regional Office, and on October 14, 2022, DNRC Water Resource Specialist Kara Huyser filed a memorandum of the conference with the Water Court. The Memorandum states that DNRC and Claimant agree upon the following modifications to claim 41H 25650-00, supported by information in the claim file, and historical and aerial imagery:
 - a. Remove the place of use and acres irrigated issue remark. Water Resources Survey ("WRS") aerial imagery from 1947 confirms the claimed 40.00 acres irrigated. DNRC states that although 1979 WRS imagery indicates 36.00 acres irrigated, this is a post-1973 reduction resulting from the construction of interstate highway I-90 being constructed through the northeastern corner of the property and outside the scope of DNRC's recommendations.

5. DNRC's Memorandum further notes that Cynthia L. Erickson appears to own part of the claimed place of use, however no ownership update has been filed with DNRC.

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. 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.
3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248(2), MCA. The Court has authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.
4. The Water Court is permitted to use information submitted by DNRC, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.
5. The Water Court shall require the claimant to confer with DNRC to resolve any identified issue remarks. Section 85-2-248(5), MCA. If an issue remark is resolved to the satisfaction of DNRC and the claimant, the claimant, with DNRC assistance, shall prepare and file any documents that are needed to support the resolution. DNRC shall file a separate memorandum with its recommendation regarding the disposition of any issue remarks involved in the proposed resolution.
6. Claimant Jason Holland and DNRC agree upon the recommendations to resolve the issue remarks in DNRC's memorandum. No additional information is needed from claimant for the Water Court to accept the resolution. The issue remarks on claim 41H 25650-00 can be resolved and removed.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the Water Court make the above-specified changes to claims 41H 25650-00. A Post Decree Abstract of Water Right Claim accompanies this Report to confirm the changes have been made in the State's centralized water right record system.

Further, through this Master's Report, Cynthia L. Erickson is hereby on notice of her potential ownership interest in claim 41H 25650-00. If Erickson determines that she has an ownership interest in the claim, she may contact DNRC to update ownership records. DNRC may be contacted at the following:

Bozeman Regional Office, DNRC 2273 Boot Hill Court, Ste. 110 (406) 586-3136
--

Julia J. Nordlund
Senior Water Master

Service via USPS Mail:

Jason Holland
PO Box 146
Belgrade, MT 59714-0146

Potential Owner:
Cynthia L. Erickson
20 Lila Drive
Helena, MT 59501-5245

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

Water Right Number: 41H 25650-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: JASON HOLLAND
PO BOX 146
BELGRADE, MT 59714 0146

Priority Date: APRIL 30, 1888

Type of Historical Right: USE

Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 1.52 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: 40.00

Source Name: WASTE & SEEPAGE, UNNAMED TRIBUTARY OF AAJKEK 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		SE	17	1S	5E	GALLATIN
Period of Diversion: APRIL 1 TO SEPTEMBER 30						
Diversion Means: HEADGATE						
Period of Use: APRIL 1 TO SEPTEMBER 30						
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	40.00		SESE	17	1S	5E	GALLATIN
Total:	40.00						