

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

* * * * *

CLAIMANTS: Turner Enterprises Inc.; Montana State Board of
Land Commissioners

CASE 41H-0124-R-2023

41H 106748-00

41H 120806-00

~~41H 128167-00~~

NOTICE OF INTENT TO APPEAR: Carl E. Schutter

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. 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, conclusions 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 serve 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

Water right claims 41H 106748-00, 41H 120806-00, and 41H 128167-00 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 address the issue remarks, the Water Court consolidated the claim into case 41H-0124-R-2023. The claims received no objections or counterobjections but did receive a notice of intent to appear from Carl Schutter.

FINDINGS OF FACT

1. These claims are all filed rights based on the same Notice of Appropriation filed by F.P. Eckley on June 10, 1888.
2. Eckley claimed 40 miners inches. Claims 41H 106748-00 and 41H 128167-00 both claimed the full amount of the 40 inches.
3. Claim 41H 120806-00 is a stock claim with no defined flow rate and is a multiple use remark of claim 41H 106748-00.
4. On June 13, 2023, the Court consolidated these claims and set a filing deadline for the parties to determine how to reduce the flow of the claims under the original amount of 40 miners inches from the Eckley portion of the Decree.
5. On August 8, 2023, Montana State Board of Land Commissioners filed a withdrawal of irrigation claim 41H 128167-00.
6. NOIA party Carl Schutter was given an additional 14 days to respond to the resolution, but nothing was filed.
7. With the withdrawal of claim 41H 128167-00, the total flow rate for the claims in this case is now under the decreed amount of 1 CFS.
8. Claim 41H 106748-00 also has an issue remark regarding the overlapping place of use with claim 41H 128167-00. This is resolved with the withdrawal of that claim.

9. Claim 41H 120806-00 has an issue remark stating the means of diversion was modified as a result of DNRC review. This remark has served its purpose of providing notice of the change and can be removed.

CONCLUSIONS OF LAW

1. 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* proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the *prima facie* claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that demonstrates the fact to be proved is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court may accept a settlement agreement that reduces or limits an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

3. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, 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.

4. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

5. The Montana Water Court has the 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.

6. The documents provided by the parties meet the required burden of proof and provide sufficient evidence to support the proposed resolution of the objections and

concerns of the notice of intent to appear parties and resolve the issue remarks appearing on all claims.

RECOMMENDATIONS

Based upon the foregoing, all issue remarks appearing on the claims should be removed as they have been resolved. Post Decree Abstracts of Water Right Claims are served with this Report to confirm that the modifications and dismissal recommended have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

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

Water Right Number: **41H 106748-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
TURNER ENTERPRISES INC
901 TECHNOLOGY BLVD
BOZEMAN, MT 59718 4107

Priority Date: JUNE 10, 1888

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.00 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: 39.30

Source Name: SPANISH CREEK, NORTH 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		NESE	17	4S	3E	MADISON

Period of Diversion: APRIL 15 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 15 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	31.60		NW	16	4S	3E	MADISON
2	5.50		NWNE	16	4S	3E	MADISON
3	2.20		N2N2	16	4S	3E	MADISON
Total:	39.30						

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

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

Water Right Number: **41H 120806-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
TURNER ENTERPRISES INC
901 TECHNOLOGY BLVD
BOZEMAN, MT 59718 4107

Priority Date: JUNE 10, 1888

Type of Historical Right: DECREED

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPANISH CREEK, NORTH FORK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Otr Sec	Sec	Twp	Rge	County
1		NESE	17	4S	3E	MADISON

Period of Diversion: JUNE 15 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: JUNE 15 TO OCTOBER 15

Place of Use:

ID	Acres	Govt Lot	Otr Sec	Sec	Twp	Rge	County
1			SE	17	4S	3E	MADISON
2			SW	16	4S	3E	MADISON
3			NW	16	4S	3E	MADISON

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

106748-00

120806-00

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

Water Right Number: **41H 128167-00 STATEMENT OF CLAIM**

Version: **3 -- POST DECREE**

Status: **DISMISSED**

Owners:
MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620 1601

Priority Date:

Type of Historical Right:

Purpose (use): **IRRIGATION**

Flow Rate:

Volume:

Source Name: **SPANISH CREEK, NORTH FORK**

Source Type: **SURFACE WATER**

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.