

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: Charles K. Brodie; Charles K. Brodie Revocable
Living Trust; Joshua R. Chamberlin; Kathryn D.
Chamberlin; Martinet Nicole Living Trust

OBJECTOR: Charles K. Brodie

NOTICE OF INTENT TO APPEAR: Four Corners County
Water & Sewer District

CASE 41H-0877-R-2023
41H 148658-00
41H 154086-00
41H 210857-00

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 148658-00, 41H 154086-00, and 41H 210857-00 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 claims into case 41H-0877-R-2023.

FINDINGS OF FACT

1. Claims 41H 148658-00 and 41H 210857-00 appeared in the 41H Preliminary Decree with the following issue remark:

A LATE OBJECTION HAS BEEN FILED TO THE ACRES IRRIGATED AND PLACE OF USE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

2. Claim 41H 154086-00 was decreed with an issue remark questioning the priority date as the claim is on Hyalite Creek and predates Gallatin County District Court case No. 1772.

3. Claimant Charles Brodie originally filed the late objection. He was given until August 25, 2023 to state if he wished to pursue this objection. The Court stated if nothing was filed by the deadline, the Objection would be dismissed.

4. Nothing was filed.

5. The remaining issue remarks served their purpose of providing notice and will 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 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.

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 information available to the Court 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 other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

4. If a claimant fails to comply with an order issued by the Water 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.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the Water Court make the above-specified changes. Post Decree Abstracts accompany this Report to confirm the changes have been made in the State’s centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

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Martinet Nicole Living Trust
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San Diego, CA 92103-1602

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

Water Right Number: 41H 148658-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

CHARLES K BRODIE
931 HULBERT RD W
BOZEMAN, MT 59718

BRODIE, CHARLES K REVOCABLE LIVING TRUST
BRODIE CHARLES K TRUSTEE
931 HULBERT RD W
BOZEMAN, MT 59718

JOSHUA R CHAMBERLIN
592 STEWART LOOP
BOZEMAN, MT 59718

KATHRYN D CHAMBERLIN
532 STEWART LOOP
BOZEMAN, MT 59718

TRANSFER PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT WILL BE SPLIT INTO SEPARATE OWNERSHIPS AFTER FINAL DECREE.

Priority Date: JUNE 30, 1887

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: 160.00

Source Name: WEST GALLATIN RIVER

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		NESENE	34	1S	4E	GALLATIN

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: BOPP-MCCULLOUGH DITCH

Period of Use: MAY 1 TO NOVEMBER 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	40.00		SWNE	27	1S	4E	GALLATIN
2	80.00		N2SE	27	1S	4E	GALLATIN
3	40.00		SESE	27	1S	4E	GALLATIN
Total:	<u>160.00</u>						

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.

148658-00 210857-00

APPLICATION TO CHANGE THE PLACE OF USE RECEIVED 04/08/92 TERMINATED 02/09/93 SEE 41H-T085112

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

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

Water Right Number: 41H 154086-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: CHARLES K BRODIE
931 HULBERT RD W
BOZEMAN, MT 59718

J FRANCIS WILL RETAIN AN UNDIVIDED 1/2 INTEREST.

Priority Date: DECEMBER 31, 1915

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 25.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: GROUNDWATER

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		SWSWSE	22	1S	4E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

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			SWSWSE	22	1S	4E	GALLATIN

Remarks:

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

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

Water Right Number: 41H 210857-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

CHARLES K BRODIE
931 HULBERT RD W
BOZEMAN, MT 59718

MARTINET NICOLE LIVING TRUST
1760 FORT STOCKTON DR
SAN DIEGO, CA 92103 1602

BRODIE, CHARLES K REVOCABLE LIVING TRUST
BRODIE CHARLES K TRUSTEE
931 HULBERT RD W
BOZEMAN, MT 59718

JOSHUA R CHAMBERLIN
592 STEWART LOOP
BOZEMAN, MT 59718

KATHRYN D CHAMBERLIN
532 STEWART LOOP
BOZEMAN, MT 59718

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Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

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Maximum Acres: 160.00

Source Name: WEST GALLATIN RIVER

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>
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1	40.00		SWNE	27	1S	4E	GALLATIN
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