

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

CLAIMANTS: Chris J. Peter; Teresa A. Peter

CASE 41H-1266-R-2024
41H 30115300

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

Claim 41H 30115300 is owned by Chris and Teresa Peter. The claim was decreed with a DNRC issue remark. No objections, counter objections, or NOIAs were filed. This claim is consolidated into Water Court Case 41H-1266-R-2024.

FINDINGS OF FACT

1. Claim 41H 30115300 contains an issue remark stating the following:

NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT WAS NOT SUBMITTED WITH THIS CLAIM.

2. The Statement of Claim for 41H 30115300 did not check the a type of right box, but does states “Date of first use prior to 1875.” The claim file also contains a passage from the Montana Historical Society regarding the history of the property and a Montana Cadastral Property Record Card. Both of these support the claimed priority date but do not contain any notices of appropriation or decree cases.

3. Therefore, it is appropriate to list the type of right on claim 41H 30115300 as a use right.

4. The remaining issue remark on claim states, “THIS EXEMPT CLAIM WAS FILED ON 8/14/2017. THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41H DECREE ISSUED 09/26/1985.” This remark is for notice purposes and can be removed.

CONCLUSIONS OF LAW

1. 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.

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 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.

3. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v. Burkhartsmeier et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master’s Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as “a relatively modest standard that the statutory criteria are ‘more probable than not’ to have been met.” *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. 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.

5. The issues raised by issue remarks must be resolved as part of the adjudication process pursuant to Section 85-2-248, MCA.

6. 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.

7. The type of right for claim 41H 30115300 is a use right.

RECOMMENDATIONS

The changes recommended above should be adopted. Post Decree Abstracts of Water Rights Claims are served with the Report to confirm that the recommendations have been made in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

SERVICE VIA USPS MAIL

Chris J. Peter
Teresa A. Peter
2116 Heeb Rd
Manhattan, MT 59741

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

Water Right Number: 41H 30115300 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: CHRIS J PETER
2116 HEEB RD
MANHATTAN, MT 59741

TERESA A PETER
2616 HEEB ROAD
MANHATTAN, MT 59741

Priority Date: DECEMBER 31, 1875

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 35.00 GPM

Volume: 2.25 AC-FT

Households: 1

Maximum Acres: 0.50

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	2	SWSWNW	31	1N	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	0.50	2	SWSWNW	31	1N	4E	GALLATIN

Total: 0.50