

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

CLAIMANTS: David K. Han

OBJECTOR: City of Bozeman

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

CASE 41H-0125-R-2024
41H 115637-00

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 claim 41H 115637-00 appeared in the Preliminary Decree for Basin 41H with Montana Department of Natural Resources and Conservation (DNRC) issue remarks. The claim received an objection from City of Bozeman and a Notice of Intent to Appear from Four Corners Water & Sewer District. To address the issue remark and the objection, the Water Court consolidated the claim into Water Court Case 41H-0125-R-2024.

FINDINGS OF FACT

1. Claim 41H 115637-00 received a DNRC issue remark stating that the priority date is questionable because the claim is for a filed right predating a historical decree on the West Gallatin River—Case No. 3850.
2. On October 2, 2024, the parties to this case submitted a Stipulation wherein the parties agreed to change the priority date of claim 41H 115637-00 to October 8, 1909.
3. The information provided resolves all issue remarks in this case.

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.
2. 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.
3. If a claimant agrees to reduce or limit an element of a claim, the Water Court does not need to determine whether the burden of proof has been met. The Water Court may accept a claimant's requested reduction or limitation without further

presentation of evidence. Rule 17(c) W.R.Adj.R.

4. The evidence entered into the record is sufficient to resolve the issue remark on this claim and support making the corrections outlined above.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above to correct the Preliminary Decree for this Basin.

A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended corrections 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 115637-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DAVID K HAN
1268 W CAMERON BRIDGE RD
BOZEMAN, MT 59718

Priority Date: OCTOBER 8, 1909

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 350.06 GPM

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: 31.00

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		SWNWSW	35	1S	4E	GALLATIN

Period of Diversion: MAY 15 TO SEPTEMBER 15

Diversion Means: HEADGATE

Ditch Name: KNADLER DITCH

Period of Use: MAY 15 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	31.00		NENE	22	1S	4E	GALLATIN

Total: 31.00