

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: Cameron Bridge Diversion Group I; Cameron
Bridge Diversion Group II; Cameron Bridge
Diversion Group III; Harold F. Gee; Hazel I. Gee

CASE 41H-0629-R-2024
41H 22576-00
41H 22577-00
41H 35544-00

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

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

All water right claims that appeared in the Preliminary Decree for the Gallatin River (Basin 41H) were subject to issue remarks resulting from pre-decree examination by the DNRC, objections, and counterobjections. Claims 41H 22576-00 and 41H 22577-00 are owned by Cameron Bridge Diversion Group I (Group I), Cameron Bridge Diversion Group II (Group II), Cameron Bridge Diversion Group III (Group III). Claim 41H 35544-00 is owned by Hazel Gee and Harold Gee.

This masters report is the only action in this case and shall also act to consolidate the above listed claims into **Case No. 41H-0629-R-2024.**

FINDINGS OF FACT

1. Claims 41H 22576-00 and 41H 22577-00 are flood irrigation claims that divert water from West Gallatin River.

2. Claim 41H 35544-00 is a flood irrigation claim that diverts water from Proctor Spring.

3. Claims 41H 22576-00, 41H 22577-00, and 41H 35544-00 received the following issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 41H 22576-00, 41H 22577-00, 41H 35544-00.

4. Claims 41H 22576-00 and 41H 22577-00 are supplemental rights and both were conveyed to the Cameron Bridge Diversion Groups in 1982.

5. Claim 41H 35544-00 is for irrigation of a small portion of the total acreage included in claims 41H 22576-00 and 41H 22577-00.

6. The place of use for 41H 35544-00 is as follows:

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	10.98		SESE	21	1S	4E	GALLATIN
	<u>Subdivision:</u>	CAMERON BRIDGE PROPERTIES TRACT/LOT: 003					
2	11.64		NESE	21	1S	4E	GALLATIN
	<u>Subdivision:</u>	CAMERON BRIDGE PROPERTIES TRACT/LOT: 002					
Total:	22.62						

7. The places of use for 41H 22576-00 and 41H 22577-00 are as follows. The squares indicate the relevant overlapping places of use between these claims and 41H 35544-00:

41H 22576-00

41H 22577-00

*Place of Use:

ID	Acres	Govt Lot	Qtr	Sec	Twp	Rge	County
1	5.00		NWSW	22	1S	4E	GALLATIN
2	80.00		NE	21	1S	4E	GALLATIN
3	65.00		NW	21	1S	4E	GALLATIN
4	20.00		NWSE	21	1S	4E	GALLATIN
5	30.00		SESE	21	1S	4E	GALLATIN
6	30.00		NESE	21	1S	4E	GALLATIN
Total:							230.00

Place of Use:

ID	Acres	Govt Lot	Qtr	Sec	Twp	Rge	County
1	5.00		NWSW	22	1S	4E	GALLATIN
2	80.00		NE	21	1S	4E	GALLATIN
3	65.00		NENW	21	1S	4E	GALLATIN
4	20.00		NWSE	21	1S	4E	GALLATIN
5	30.00		SESE	21	1S	4E	GALLATIN
6	30.00		NESE	21	1S	4E	GALLATIN
Total:							230.00

8. Although claim 41H 35544-00 overlaps the place of use of claims 41H 22576-00 and 41H 22577-00 the point of diversion on claim 41H 35544-00 is different from 22576-00 and 41H 22577-00.

9. Claim 41H 35544-00 was developed later and has a later priority date than 22576-00 and 41H 22577-00.

10. There is no reason why these claims cannot be used on overlapping places of use.

11. According to information in the claim files the remarks shall be removed.

12. Four Corners County Water & Sewer District filed a Notice of Intent to Appear to claims 41H 22576-00 and 41H 22577-00 to “participate in the resolution of issue remarks...”

13. Since the issue remarks are being removed without further changes to the claims, Four Corners County Water & Sewer District is not entitled to further participation in the case.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the 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. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

8. The party seeking to overcome the prima facie status of a Statement of Claim bears the burden of proof; this burden also applies to a claimant’s objection to his own claim. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

CONCLUSIONS OF LAW

1. The evidence in the record is sufficient to resolve the issue remarks placed on the above-captioned claims.

2. The issue remark on claims 41H 22576-00, 41H 22577-00, and 41H 35544-00 should be removed because 41H 22576-00 and 41H 22577-00 are supplemental rights. Claim 41H 35544-00 is a different water right entirely because the point of diversion is different. The remarks should be removed.

RECOMMENDATIONS

1. All issue remarks should be removed from all claims.
2. Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Cameron Bridge Diversion Group I
% Posey Paula Lee
2582 W Cameron Bridge Rd
Bozeman, MT 59715

Cameron Bridge Diversion Group II
% Roger B Van Dyken
2147 Lee Rd
Bozeman, MT 59718

Cameron Bridge Diversion Group III
% Jim Lether
2001 Lee Rd
Bozeman, MT 59715

Harold F. Gee
Hazel I. Gee
4921 River Rd
Bozeman, MT 59718

Service Via Electronic Mail:

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

Water Right Number: 41H 22576-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CAMERON BRIDGE DIVERSION GROUP I
%POSEY PAULA LEE
2582 W CAMERON BRIDGE RD
BOZEMAN, MT 59715

CAMERON BRIDGE DIVERSION GROUP II
% ROGER B VAN DYKEN
2147 LEE RD
BOZEMAN, MT 59718

CAMERON BRIDGE DIVERSION GROUP III
% JIM LETHER
2001 LEE RD
BOZEMAN, MT 59715

Priority Date: JUNE 10, 1870

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.58 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:** 230.00

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		NENWSW	27	1S	4E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: LEWIS DITCH

Period of Use: APRIL 1 TO OCTOBER 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	5.00		NWSW	22	1S	4E	GALLATIN
2	80.00		NE	21	1S	4E	GALLATIN
3	65.00		NW	21	1S	4E	GALLATIN

4	20.00	NWSE	21	1S	4E	GALLATIN
5	30.00	SESE	21	1S	4E	GALLATIN
6	30.00	NESE	21	1S	4E	GALLATIN
Total:	<u>230.00</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.

22576-00

22577-00

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

Water Right Number: 41H 22577-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CAMERON BRIDGE DIVERSION GROUP I
%POSEY PAULA LEE
2582 W CAMERON BRIDGE RD
BOZEMAN, MT 59715

CAMERON BRIDGE DIVERSION GROUP II
% ROGER B VAN DYKEN
2147 LEE RD
BOZEMAN, MT 59718

CAMERON BRIDGE DIVERSION GROUP III
% JIM LETHER
2001 LEE RD
BOZEMAN, MT 59715

Priority Date: JUNE 10, 1870

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.40 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:** 230.00

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		NENWSW	27	1S	4E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: LEWIS DITCH

Period of Use: APRIL 1 TO OCTOBER 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	5.00		NWSW	22	1S	4E	GALLATIN
2	80.00		NE	21	1S	4E	GALLATIN
3	65.00		NENW	21	1S	4E	GALLATIN

4	20.00	NWSE	21	1S	4E	GALLATIN
5	30.00	SESE	21	1S	4E	GALLATIN
6	30.00	NESE	21	1S	4E	GALLATIN
Total:	<u>230.00</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.

22576-00

22577-00

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

Water Right Number: 41H 35544-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: HAROLD F GEE
4921 RIVER RD
BOZEMAN, MT 59718

HAZEL I GEE
4921 RIVER RD
BOZEMAN, MT 59715

Priority Date: JUNE 13, 1913

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 386.00 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: 22.62

Source Name: PROCTOR SPRING

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		SESENE	28	1S	4E	GALLATIN

Period of Diversion: JUNE 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

Subdivision: CAMERON BRIDGE PROPERTIES

Period of Use: JUNE 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	10.98		SESE	21	1S	4E	GALLATIN

Subdivision: CAMERON BRIDGE PROPERTIES TRACT/LOT: 003

2	11.64		NESE	21	1S	4E	GALLATIN
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Subdivision: CAMERON BRIDGE PROPERTIES TRACT/LOT: 002

Total: 22.62