

Montana Water Court
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FILED
07/02/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41H-0675-R-2023
Nordlund, Julia
3.00

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

CLAIMANT: Kelvin Mark Huyser

CASE 41H-0675-R-2023
41H 4715-00

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 4715-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-0675-R-2023.

FINDINGS OF FACT

1. Claim 41H 4715-00 appeared in the 41H Preliminary Decree with the following issue remarks:

AN AMENDMENT WAS SUBMITTED ON 01/05/2018 REQUESTING TO AMEND THE POINT OF DIVERSION, MEANS OF DIVERSION, PERIOD OF DIVERSION, AND PERIOD OF USE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

AN AMENDMENT WAS SUBMITTED ON 01/05/2018 REQUESTING TO AMEND THE PLACE OF USE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED BY THE COURT AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

2. The Court was unable to locate the documents submitted so it set a filing deadline for the Claimant to state if he wished to pursue the Amendments.

3. Nothing was filed by the initial deadline of January 12, 2024, so the Court set an additional period of time for Claimant to pursue the amendment. The second Filing Deadline Order stated that if nothing was filed by March 27, 2024, the requests to amend claim 41H 4715-00 would be dismissed.

4. Nothing was filed.

5. The issue remarks served their purpose 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.

5. The lack of response from the Claimant combined with the lack of supporting evidence with the Amendments is a sufficient justification to dismiss the Amendments and close the case.

RECOMMENDATIONS

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS mail:

Huyser, Kelvin Mark
2281 Axtell Anceny Rd
Bozeman, MT 59718

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

Water Right Number: 41H 4715-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: KELVIN MARK HUYSER
2281 AXTELL ANCENY RD
BOZEMAN, MT 59718

Priority Date: DECEMBER 31, 1902

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 20.00 GPM

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: 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		SWNWNE	16	3S	4E	GALLATIN

Period of Diversion: DECEMBER 1 TO MARCH 31

Diversion Means: WELL

Period of Use: DECEMBER 1 TO MARCH 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			NE	16	3S	4E	GALLATIN