

Montana Water Court  
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**FILED**  
07/09/2024  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41H-0898-R-2023  
Nordlund, Julia  
5.00

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

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CLAIMANT: Amerimont Inc.

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

**CASE 41H-0898-R-2023**

41H 114896-00

41H 148468-00

**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 114896-00 and 41H 148468-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with issue remarks 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 Water Court Case 41H-0898-R-2023.

### FINDINGS OF FACT

1. Claim 41H 114896-00 received the following substantive issue remark:  
THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 67 TIMES THE CAPACITY OF THE RESERVOIR.
2. Claim 41H 148468-00 received the following substantive issue remarks:  
A LATE OBJECTION HAS BEEN FILED TO THE PURPOSE, PLACE OF USE, ACRES IRRIGATED AND MEANS OF DIVERSION OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.  
OWNERSHIP OF THIS RIGHT APPEARS TO BE INCORRECT. THE PLACE OF USE IS HIGHLY SUBDIVIDED PER CADASTRAL RECORDS AND 2015 USDA AERIAL PHOTOS APPEAR TO INDICATE 0 ACRES IRRIGATED.
3. After providing an opportunity for First Security Bank to pursue its late objection, the Court dismissed the objection on October 25, 2023, resolving the issue remark.
4. On January 14, 2024, the DNRC filed a memorandum with the Water Court to assist in resolving the unresolved substantive issue remarks appearing on the claims. The memorandum indicated that the Claimant did not contact the DNRC to assist in resolving the issue remarks.
5. Because the Claimant did not contact the DNRC, the DNRC could not resolve the issue remark questioning the ownership and acres irrigated appearing on claim 41H 148648-00. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process.
6. In its Memorandum, DNRC stated claim 41H 114896-00 appears to have the reservoir put on in error. DNRC also stated that claim 41H 148468-00 should follow

the same ownership record as claim 41H 114896-00, however it did not address the 0 acres irrigated aspect of the issue remark.

7. Claimants were given a deadline of June 1, 2024 to respond to DNRC's recommendations. The Court's Order stated that if nothing was filed, it would remove the reservoir from claim 41H 114896-00 and dismiss claim 41H 148468-00.

8. Nothing was submitted by Claimants as of the date of this Report.

#### CONCLUSIONS OF LAW

1. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. 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.

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. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing, or fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R.

4. Pursuant to Section 85-2-248(9), MCA, and Rule 22, W.R.Adj.R., when a claimant fails to comply with an Order issued by the Water Court, including an Order issued by a Water Master appointed by the Court, the Court, upon motion, or its own initiative, can among other actions: 1) amend the elements of the claim to conform with the information in the claim file or information obtained by the Court, or 2) terminate the claim.

5. Claimants, failed to provide any evidence to that claim 41H 148468-00 is in use or there is any reservoir related to 41H 114896-00. These facts combined with the

lack of participation from Claimant are enough to justify a dismissal of the claim 41H 148468-00 and the removal of the reservoir from claim 41H 114896-00.

**RECOMMENDATIONS**

The changes recommended above should be adopted. Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the above-changes have been adopted.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

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

**Water Right Number:** 41H 114896-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** AMERIMONT INC  
PO BOX 990  
MANHATTAN, MT 59741-0990

**\*Priority Date:** MAY 15, 1888

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**\*Flow Rate:** 210.94 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

**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		SWNWSE	22	1S	4E	GALLATIN

**Period of Diversion:** APRIL 1 TO OCTOBER 31

**Diversion Means:** HEADGATE

**Subdivision:** ARMSTRONG ADD TRACT/LOT: 1-20, 22 BLOCK: 19 31 32

**Ditch Name:** J. B. WEAVER 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	80.00		N2	2	1N	4E	GALLATIN

**Subdivision:** ARMSTRONG ADD TRACT/LOT: 1-20, 22 & 43 BLOCK: 19 31 32

**Total:** 80.00

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

**Water Right Number:** 41H 148468-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** AMERIMONT INC  
PO BOX 990  
MANHATTAN, MT 59741-0990

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** WEST GALLATIN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.