

Montana Water Court
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FILED
06/14/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41H-0686-R-2023
Nordlund, Julia
6.00

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

CLAIMANTS: Algirdas J. Jesaitis; Ellen F. Jesaitis

CASE 41H-0686-R-2023
41H 99624-00

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

Claim 41H 99624-00 is owned by Algirdas and Ellen Jesaitis. The claim appeared in the Preliminary Decree for Basin 41H with DNRC issue remarks and was consolidated into Water Court Case 41H-0686-R-2023.

FINDINGS OF FACT

1. Claim 41H 99624-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with acres irrigated issue remarks resulting from pre-decree examination by the Department of Natural Resources and Conservation (DNRC). To address the issue remarks, the Water Court ordered claimants to confer with the Bozeman Regional Office of the DNRC, pursuant to § 85-2-248(5), MCA.

2. On April 25, 2024, James Fleming at the Bozeman Regional Office of the DNRC filed a memorandum. Mr. Fleming indicated that Claimants contacted the DNRC and later provided documentation to resolve the issue remark.

3. Claimants state the claim is utilized by collecting water from springs via dam/dike located in the NENENW of Section 32. The collected water spreads to irrigate the pasture land just south of the dam/dike. Claimants further state the water right uses water when it is available and that is why all usage was not previously visible in aerial photos taken late in summer.

4. Based on submissions from Claimants, Mr. Fleming made the following recommendations:

- a. Change the type of irrigation from flood to subirrigation.
- b. Reduce the acres irrigated from 5.0 to 0.54 acres as depicted in the historical aerial photographs submitted by Claimants.

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. 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.

4. The evidence entered into the record is sufficient to resolve the issue remarks 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.

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 99624-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ALGIRDAS J JESAITIS
115 JACK LEG LN
BOZEMAN, MT 59715

ELLEN F JESAITIS
115 JACK LEG LN
BOZEMAN, MT 59715

Priority Date: DECEMBER 31, 1925

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: NATURAL SUBIRRIGATION

Flow Rate: 1.00 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: 0.54

Source Name: SPRING, UNNAMED TRIBUTARY OF SOURDOUGH CREEK

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		NENENW	32	2S	6E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO OCTOBER 1

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	0.54		E2NENW	32	2S	6E	GALLATIN

Total: 0.54

PLACE OF USE IS IN LOT 5, CERTIFICATE OF SURVEY NO. 1736C.

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

99624-00

99630-00