

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: Aim Inc.; Braden Harris; Miranda Harris; SROA
26 Old Milwaukee MT LLC

CASE 41H-0901-R-2023
41H 114989-00

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

Claim 41H 114989-00 is owned by Aim Inc., Braden and Miranda Harris, and SROA 26 Old Milwaukee MT LLC. The claim appeared in the Preliminary Decree for Basin 41H with DNRC issue remarks and then received a Notice of Intent to Appear from Four Corners County Water & Sewer District and was consolidated into Water Court Case 41H-0901-R-2023.

FINDINGS OF FACT

1. Claim 41H 114989-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with acres irrigated, volume, and flow rate 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 1, 2024, James Fleming at the Bozeman Regional Office of the DNRC filed a memorandum. Mr. Fleming indicated that Claimant Braden Harris contacted the DNRC but did not provide any documentation to resolve the issue remarks. The remaining Claimants failed to contact the DNRC and did not provide any documentation to resolve the issue remarks.

3. Mr. Fleming made the following recommendations:

- a. That in his review of the aerial photos and maps, the place of use should be reduced to 36 acres in the E2NW of Section 14, T2S, R4E, Gallatin County.
- b. The flow rate should remain as is and the volume should be replaced with the information remark stating: VF009 THE TOTAL VOLUME OF THE RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

4. It was ordered that Claimants and NOIA party Four Corners County Water & Sewer District show cause why the above changes should not be made to claim 41H 114989-00. The Order stated if nothing was filed by the deadline, the Court would reduce the acres irrigated and amend volume pursuant to DNRC's recommendations.

5. Nothing was filed.

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. 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.

5. Since the NOIA party in this case did not respond to the Court's deadline, their appearance is dismissed.

6. 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.

Service via USPS mail:

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Gallatin Gateway, MT 59730

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Harris, Miranda
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Parker, CO 80134-5222

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

Water Right Number: 41H 114989-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

BRADEN HARRIS
6078 BRIDLE PATH LANE
PARKER, CO 80134-5222

MIRANDA HARRIS
6078 BRIDLE PATH LANE
PARKER, CO 80134-5222

AIM INC
PO BOX 743
GALLATIN GATEWAY, MT 59730

SROA 26 OLD M,ILWAUKEE MT LLC
324 DATURA ST STE 338
WEST PALM BEACH, FL 33401

Priority Date: JUNE 1, 1890

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

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: 36.00

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		NWSWSE	14	2S	4E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 20

Diversion Means: HEADGATE

Ditch Name: BECK AND BORDER DITCH

Period of Use: MAY 1 TO OCTOBER 20

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	36.00		E2NW	14	2S	4E	GALLATIN

Total: 36.00