

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

CLAIMANTS: Diana K. Egbert; Michael R. Egbert

OBJECTORS: James J. Dolan Jr.; Samantha L. Dolan

CASE 41H-0111-R-2023
41H 141113-00

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 141113-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with an issue remark resulting from pre-decree examination by the Department of Natural Resources and Conservation (“DNRC”). The claim also received an objection from James J. Dolan Jr and Samantha L. Dolan (“Dolans”). To address the issue remark and the objection, the Water Court consolidated the claim into Water Court Case 41H-0111-R-2023.

FINDINGS OF FACT

1. Claim 41H 141113-00 is a sprinkler irrigation claim from South Dry Creek.
2. The claim received the following issue remark:

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

3. The Dolans filed an objection to the point of diversion/means of diversion.

Their objection states: “The point of diversion, and ditch name are in question. All DNRC issue remarks must be resolved before this water right may proceed to final decree.”

4. On March 5, 2024, the Dolans filed a Stipulation Settling Objections (“Stipulation”).¹

5. The parties agree that the point of diversion and the ditch name should be changed as follows:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	NW NE NW SE SW	SW	19 48	2S	5E	GALLATIN
Period of Diversion:	JUNE 1 TO NOVEMBER 1					
Diversion Means:	HEADGATE					
Ditch Name:	MYRON-FERRIS-DITCH BEATTY DITCH					

6. To support these changes, the parties note that the Water Resource Survey shows the ditch currently listed Myron-Ferris Ditch, diverts downstream of the place of

¹ The Stipulation and all other case documents are viewable in the Water Court’s FullCourt Enterprise case management system.

use. The parties determined that the place of use is associated with the Beatty Ditch instead, which diverts from the NWNENW of Section 19, T2S, R5E, Gallatin County.

7. In support, the parties attach the Water Resource Survey maps, as well as a current map depicting the point of diversion, ditch system, and place of use for the claim.

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. Settlement agreements are subject to review and approval of the Water Court. Rule 17(a), W.R.Adj.R. If a claimant agrees to reduce or limit an element of a claim, the water court may accept the claimant’s requested reduction or limitation without further presentation of evidence, unless there is an unresolved issue remark on the claim, in which case § 85-2-248, MCA must be applied. Rule 17(c), W.R.Adj.R.

5. The Stipulation does not seek to reduce or enlarge the claim. Rather, it seeks to refine the point of diversion and means of diversion on the claim abstract to conform the actual historical use of the claim on the ground. The Stipulation should be accepted.

6. The Stipulation resolves the Dolans' objection and the issue remark placed on the claim.

RECOMMENDATIONS

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS mail:

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\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Datavol)\Share\WC-BASIN FOLDERS\41H PD\41H Cases\41H-R111\41H-111 MR stip POD 5-2-24
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 141113-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DIANA K EGBERT
1211 COBB HILL RD
BOZEMAN, MT 59718-9076

MICHAEL R EGBERT
1211 COBB HILL RD
BOZEMAN, MT 59718-9076

Priority Date: MAY 25, 1909

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 34.00 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: 2.00

Source Name: SOUTH DRY CREEK

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		NWNENW	19	2S	5E	GALLATIN

Period of Diversion: JUNE 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: BEATTY DITCH

Period of Use: JUNE 1 TO NOVEMBER 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	2.00		NENESE	13	2S	4E	GALLATIN

Total: 2.00