

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: Carl E. Schutter; Clifford D. Schutter; Laura D. Schutter; Nicholas J. Schutter

CASE 41H-0286-R-2023
41H 136726-00

OBJECTOR: State of Montana Board of Land Commissioners

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

The claim in this case appeared in the Preliminary Decree for Basin 41H with an objection from Montana State Board of Land Commissioners and a Notice of Intent to Appear from Four Corners County Water & Sewer District.

FINDINGS OF FACT

1. On December 4, 2023, Claimants submitted an Amendment to Remove Place of use Parcel #3.
2. Neither Objector nor NOIA initially filed a response so the Court put the case on a hearing track.
3. On January 10, 2024, Montana State Board of Land Commissioners filed a Withdrawal of its Objection.
4. On May 13, 2024, Four Corners and Claimants submitted a Stipulation.
5. All parties are in agreement that place of use ID 3 should be removed from 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 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. If a claimant agrees to reduce or limit an element of a claim, the Water Court does not need to determine whether the burden of proof has been met. The Water Court may accept a claimant's requested reduction or limitation without further presentation of evidence. Rule 17(c) W.R.Adj.R.

4. The parties agree that this change resolves all objections.

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.

A 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 136726-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

CARL E SCHUTTER
3377 STORY MILL RD
BOZEMAN, MT 59715-2301

CLIFFORD D SCHUTTER
3845 KUIPERS RD
MANHATTAN, MT 59741-8100

LAURA D SCHUTTER
3845 KUIPERS ROAD
MANHATTAN, MT 59741-8100

NICHOLAS J SCHUTTER
PO BOX 505
MANHATTAN, MT 59741-0505

Priority Date: MAY 1, 1930

Type of Historical Right: DECREED

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

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: 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		NWNWNW	22	1S	4E	GALLATIN

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: DITCH

Ditch Name: MORELAND CANAL

Period of Use: MAY 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			SW	4	1N	3E	GALLATIN
2				5	1N	3E	GALLATIN
3				8	1N	3E	GALLATIN

4		9	1N	3E	GALLATIN
5	S2	10	1N	3E	GALLATIN
6		15	1N	3E	GALLATIN

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.

136654-00

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