

Montana Water Court  
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**FILED**  
05/08/2024  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41H-0685-R-2023  
Nordlund, Julia  
3.00

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

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CLAIMANT: Mark A. Jarvis

**CASE 41H-0685-R-2023**  
41H 141145-00

**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 141145-00 appeared in the Preliminary Decree for the Gallatin River Basin (Basin 41H) with an issue remark from pre-decree examination by the Department of Natural Resources and Conservation (“DNRC”). To address the issue remark, the Water Court consolidated the claim into Water Court Case 41H-0685-R-2023.

### FINDINGS OF FACT

1. Claim 41H 141145-00 received the following issue remark:  
THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
2. The claim is an irrigation right that claims a point of diversion as a headgate on Hudson Creek that diverts water to the Miller Ditch.
3. To resolve the issue remark, the Court referred the Claimant to the Bozeman Regional Office of the DNRC.
4. On March 20, 2024, the DNRC filed a memorandum<sup>1</sup> with the Water Court. The memorandum indicates that the Claimant did not contact the DNRC to assist in resolving the issue remark, but the DNRC reviewed available aerial imagery to resolve the issue remark.
5. The DNRC states that the issue remark was placed on the claim due to limited visibility in aerial photography from heavy vegetation in the area. The DNRC reviewed Water Resource Survey mapping of the Miller Ditch and determined that the claimed point of diversion matches the legal land description of the Miller Ditch. The DNRC recommends the issue remark be removed without any modifications to the point of diversion.

### 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

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<sup>1</sup> The DNRC's memorandum and all other case documents are viewable in the Water Court's FullCourt Enterprise case management system.

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. *Burkhartsmeyer et al. v. Burkhartsmeyer 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. When resolving issue remarks, the Montana 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.

5. The evidence provided by the DNRC supports removal of the issue remark placed on the claim without any further modifications.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above.

A Post Decree Abstract of Water Right Claim is served with this Master’s 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:**

Jarvis, Mark A.  
702 East Main St.  
Bozeman, MT 59715

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

**Water Right Number:** 41H 141145-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** MARK A JARVIS  
702 EAST MAIN ST  
BOZEMAN, MT 59715

**Priority Date:** MAY 4, 1896

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.83 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:** 48.30

**Source Name:** HUDSON 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		SWNENW	33	2S	7E	GALLATIN

**Period of Diversion:** JUNE 1 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Period of Use:** JUNE 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	15.00		W2SE	28	2S	7E	GALLATIN
2	33.30		SW	28	2S	7E	GALLATIN

**Total:** 48.30

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**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.

141145-00      141146-00