

Montana Water Court  
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**FILED**  
05/06/2024  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41H-0820-R-2023  
Nordlund, Julia  
2.00

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

\*\*\*\*\*

CLAIMANTS: Fae C. Kauk; Bethany A. Rosa; John A. Rosa

OBJECTORS: West Gallatin Canal Co.

NOTICE OF INTENT TO APPEAR: Four Corners County Water  
& Sewer District

**CASE 41H-0820-R-2023**  
41H 148452-00

**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 148452-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with issue remarks resulting from pre-decree examination by the Department of Natural Resources and Conservation (“DNRC”). To address the issue remarks, the Water Court consolidated the claims into case 41H-0820-R-2023.

### FINDINGS OF FACT

1. Claim 41H 148452-00 received the following issue remark:

A LATE OBJECTION HAS BEEN FILED TO THE FLOW RATE, VOLUME, PLACE OF USE AND MAXIMUM ACRES OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

2. The claim received a late objection from West Gallatin Canal Co. on March 21, 2002.

3. A request to split the claim was also filed by Claimant Fae Cope Bolinger and previous owner West Town Holdings LLC. John and Bethany Rosa have obtained West Town Holdings LLC interest in the water right.

4. The claim was previously split in 2021 resulting in child right 41H 30152650.

5. West Gallatin Canal Co., Bolinger, and the Rosas were given until January 14, 2024, to notify the Court if they intended to pursue the objection and the split request. The Court stated if nothing was filed by the deadline, it would dismiss the late objection and the split request.

6. Nothing was filed by any of the parties.

7. Claim 41H 148452-00 also received the following issue remark:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON THE WEST GALLATIN RIVER WITH A PRIORITY DATE PREDATING CASE NO. 3850, GALLATIN COUNTY.

8. The claim has a priority date of August 8, 1881. This priority date is supported by a water right declaration filed in the territorial courthouse of Gallatin County. There is no evidence in the record to show this priority date is incorrect.

## 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. If a claimant fails to comply with an order issued by the Water Court, the Court may, upon motion or its own initiative, issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R.

5. None of the parties in this case responded to the Court’s filing deadline. The late objection and the split request should therefore be dismissed.

6. Further, the issue remark does not provide sufficient evidence to overcome the prima facie status of the claim. The issue remark questioning the priority date should be removed.

## RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the Water Court adopt the above-specified changes. Post Decree Abstracts

accompany this Report to confirm the remarks 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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Rosa, John A.  
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Bozeman, MT 59718-5522

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West Gallatin Canal Co.  
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Gallatin Gateway, MT 59730-0553

**Service Via Electronic Mail:**

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

**Water Right Number:** 41H 148452-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** FAE C KAUK  
780 CONRAD DR  
KALISPELL, MT 59901-4614  
  
BETHANY A ROSA  
2264 JACKRABBIT LN UNIT B  
BOZEMAN, MT 59718-5522  
  
JOHN A ROSA  
2264 JACKRABBIT LN UNIT B  
BOZEMAN, MT 59718-5522

**Priority Date:** AUGUST 8, 1881

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 3.03 CFS

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 80.00

**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		NESENW	22	1S	4E	GALLATIN

**Period of Diversion:** APRIL 1 TO DECEMBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** STONE-WEAVER DITCH

**Period of Use:** APRIL 1 TO DECEMBER 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	80.00		E2NE	28	1N	4E	GALLATIN

**Total:** 80.00

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

148448-00

148450-00

148451-00

148452-00

148453-00

210896-00

SPLIT CLAIM NO. 41H 30152650 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.