

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

CLAIMANT: Baker Springs Owners Association Inc.

CASE 41H-0936-R-2025
41H 35461-00

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 35461-00 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 consolidates the claim into case 41H-0936-R-2025. The claim received no objections or counterobjections or notices of intent to appear.

FINDINGS OF FACT

1. Claim 41H 35461-00 has an issue remark which states:
THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE
MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS
STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT
THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF
CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION.
41H 35461-00, 41H 138701-00.
2. Claims 41H 35461-00 and 41H 138701-00 are filed rights based on the same Notice of Appropriation filed by William Perks on November 11, 1890.
3. Upon reviewing the Notice of Appropriation, each water right is claiming a separate portion of the Appropriation.
4. Claim 41H 138701-00 has already had the issue remark removed in a prior Water Court proceeding.
5. Claim 41H 35461-00 also has an issue remark stating THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED NOTICE OF APPROPRIATION IS 11/11/1890.
6. No objection to the priority date was filed. The priority date on the preliminary decree abstract is 11/26/1890.

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. A preponderance of the evidence is evidence that demonstrates the fact to be proved is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court may accept a reduction or limitation to an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

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 Montana Water Court has the 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.

RECOMMENDATIONS

Based upon the foregoing, all issue remarks appearing on the claims should be removed as they have been resolved. Post Decree Abstracts of Water Right Claim are served with this Report to confirm that the modifications and dismissal recommended have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

SERVICE VIA ELECTRONIC MAIL

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

Water Right Number: 41H 35461-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BAKER SPRINGS OWNERS ASSN INC
PO BOX 1134
MANHATTAN, MT 59741

Priority Date: NOVEMBER 26, 1890

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 2.50 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: 200.00

Source Name: TROUT CREEK

Source Type: SURFACE WATER
ALSO KNOWN AS SPRING CREEK

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		NESWSE	13	1N	3E	GALLATIN

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: HEADGATE

WATER FROM TROUT CREEK IS CONVEYED THROUGH THE BAKER AND PERKS DITCH TO BAKER CREEK WHICH IS USED AS A NATURAL CARRIER TO CONVEY WATER TO THE PLACE OF USE.

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	80.00		S2NE	13	1N	3E	GALLATIN
2	40.00		NWNE	13	1N	3E	GALLATIN
3	80.00		SE	13	1N	3E	GALLATIN

Total: 200.00

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.

35460-00

35461-00

35462-00