

Montana Water Court
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FILED
01/29/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41H-1243-R-2024
Nordlund, Julia
4.00

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

CLAIMANT: Nerlin Ranch LLC

CASE 41H-1243-R-2024
41H 138772-00

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

FINDINGS OF FACT

1. 41H 138772-00 in this case appeared in the Preliminary Decree for Basin 41H with Montana Department of Natural Resources and Conservation (DNRC) issue remarks questioning the point of diversion. The claim is consolidated into case 41H-1243-R-2024.

2. The DNRC issue remark states

POINT OF DIVERSION NO. 2 APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NENWSW SEC 26 TWP 2N RGE 2E GALLATIN COUNTY.

3. Claimant responded on December 20, 2025 to assert the pre-1973 point of diversion for the claim should remain in the SWNE Sec. 26, Twp. 2N Rge. 2E. This is what is claimed on the Statement of Claim.

4. The note submitted by Claimant states this point of diversion for POD ID 2 is a headgate, which is contrary to the ditch that is currently listed as the means of diversion. However, this claim is subject to a change authorization completed in 06/01/1984 which does list the means of diversion as a headgate and pump. As the headgate is a post-1973 change to this water right, the Court does not have jurisdiction to make that correction to the preliminary decree abstract.

5. DNRC provided no additional evidence to overcome the prima facie status of the claim. There should be no changes to the claim.

6. The remaining issue remark is for notice purposes only and should be removed.

CONCLUSIONS OF LAW

1. 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.

2. 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.

3. 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.

4. 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.

5. For the above-mentioned reasons, the claim in this case should not be modified and the issue remarks should be removed.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that 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 that the recommended changes have been made in the state’s centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Nerlin Ranch LLC
40 Carpenter Rd
Three Forks, MT 59752

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

Water Right Number: 41H 138772-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: NERLIN RANCH LLC
40 CARPENTER RD
THREE FORKS, MT 59752

Priority Date: MAY 1, 1863

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 9.00 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:** 195.00

Source Name: GALLATIN RIVER

Source Type: SURFACE WATER

Source Name: UNNAMED TRIBUTARY OF 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		SWNE	35	2N	2E	GALLATIN

Source Name: GALLATIN RIVER

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: HEADGATE

2		SWNE	26	2N	2E	GALLATIN
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Source Name: UNNAMED TRIBUTARY OF GALLATIN RIVER

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: DITCH

Period of Use: APRIL 1 TO OCTOBER 15

***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	30.00		NWSW	26	2N	2E	GALLATIN
2	30.00		SWSW	26	2N	2E	GALLATIN
3	10.00		SESW	26	2N	2E	GALLATIN
4	40.00		NESE	27	2N	2E	GALLATIN
5	25.00		SESE	27	2N	2E	GALLATIN
6	15.00		SWSE	27	2N	2E	GALLATIN

7	30.00	NWSE	27	2N	2E	GALLATIN
8	10.00	NESW	27	2N	2E	GALLATIN
9	5.00	NWNW	35	2N	2E	GALLATIN
Total:	<u>195.00</u>					

Remarks:

FILE REFLECTS AUTHORIZATION TO CHANGE POINT OF DIVERSION COMPLETED 06/01/1984.