

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

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CLAIMANTS: Tamara Faust; Dean H. Williamson; SA&J MT
LLC

OBJECTOR: City of Bozeman

CASE 41H-0113-R-2023
41H 141023-00

CLOSING ORDER

The Water Court included an abstract for claim 41H 141023-00 in the Preliminary Decree for the Gallatin River Basin (Basin 41H). The claim describes a use right to use water from Hyalite Creek for stock water use with a November 15, 1875 priority date. The State's water rights database indicates the claim is owned jointly by Tamara Faust ("Faust"), Dean H. Williamson ("Williamson"), and SA&J MT LLC ("SA&J").

The Preliminary Decree abstract includes one issue remark stating:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS
FOR A USE RIGHT ON HYALITE CREEK WITH A PRIORITY DATE
PREDATING CASE NO. 1772, GALLATIN COUNTY.

The City of Bozeman ("Bozeman") filed an objection to the claim. The Water Court consolidated the claim into this case to address the issue remark and Bozeman's objection. The Court later put the case on a hearing track and set various deadlines.

On January 3, 2024, the Senior Water Master assigned to this case issued a show cause order to clarify that the claim is not appurtenant to property owned by Faust or Williamson. The order was based on a Motion to Correct Ownership filed by SA&J. The

motion contends the claim is appurtenant only to SA&J's property located in the following described parcel:

W2NE4 & NW4 E OF CENTERLINE OF MIDDLE CREEK LESS
HWRW & COS 2791

Neither Faust nor Williamson responded to the order.

On June 30, 2025, Bozeman filed a Stipulation and Settlement Agreement ("Stipulation") and asked the Court to vacate all prehearing deadlines. Under the terms of the Stipulation Bozeman withdraws its objection subject to a private arrangement whereby SA&J and its successors subordinate and agree not to call Bozeman's provisional permit no. 41H 20736-00.

The Water Court encourages parties to resolve objections and address issue remarks through settlement. Rule 16(a), W.R.Adj.R. When presented with a stipulated settlement, the Water Court reviews the settlement to ensure the contractual commitments properly address the issue remarks and do not expand the elements of a claim without supporting evidence. Section 85-2-233(5)(b), MCA, Rule 17(a), W.R.Adj.R.

The Stipulation meets this standard. Parties are free to reach a private arrangement whereby an otherwise senior water right agrees not to call a junior right, which is what SA&J agreed to here.

Bozeman's agreement to withdraw its objection also resolves the sole issue remark because this particular remark (remark code P370) is limited to noting the claim is a use right with a priority date predating a district court decree. This remark does not necessarily call into question the validity of the priority date because district court decrees often did not include all water rights on a source, nor was there a clear mechanism for doing so. Montana water law recognizes the validity of non-decreed rights on a decreed source on several occasions. *See, e.g., State ex rel. McKnight v. Dist. Court*, 111 Mont. 520, 111 P.2d 292 (1941); *Tucker v. Jones*, 8 Mont. 225, 232, 19 P. 571, 574 (1888). The P370 remark put parties with decreed rights from old district court cases on notice of a potential priority date issue. The remark did not generate any objections other than Bozeman's. The remark served its notice purpose and should be removed.

Finally, although not specifically addressed in the Stipulation, this Order also confirms and finalizes the ownership issue by removing Faust and Williamson, and including remarks confirming the point of diversion and place of use are limited to the SA&J property references in SA&J's motion. The Court also adds a remark referencing the private agreement.

ORDER

Therefore, it is ORDERED that the Stipulation is APPROVED. Claim 41H 141023-00 is modified as provided in this Order, with the issue remark removed and the information remarks added. Bozeman's objection is DISMISSED as resolved. All proceedings are vacated and this case is CLOSED.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS mail:

Tamara Faust
4021 E Del Rio Dr
Cottonwood, AZ 86326

Dean H Williamson
410 E Geyser St
Livingston, MT 59047-3524

Service Via Electronic Mail:

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

Water Right Number: 41H 141023-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: SA&J MT LLC
%JASON BRIGHT
2100 WEST LAKE OF THE ISLES PKWY
MINNEAPOLIS, MN 55405

Priority Date: NOVEMBER 15, 1875

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM.

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: HYALITE 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		E2NW	30	1S	5E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

THE POINT OF DIVERSION IS LIMITED TO THE W2NE4 & NW4 E OF CENTERLINE OF MIDDLE CREEK LESS HWRW & COS 2791

Period of Use: JANUARY 1 TO DECEMBER 31

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			E2NW	30	1S	5E	GALLATIN

THE PLACE OF USE IS LIMITED TO THE W2NE4 & NW4 E OF CENTERLINE OF MIDDLE CREEK LESS HWRW & COS 2791

Remarks:

THIS WATER RIGHT IS SUBJECT TO A PRIVATE AGREEMENT FILED IN WATER COURT CASE 41H-0113-R-2023.