

Montana Water Court
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FILED
03/14/2025
Sara Calkins
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Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41H-0856-R-2024
Nordlund, Julia
2.00

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

* * * * *

CLAIMANT: Ann S. Dickerson

CASE 41H-0856-R-2024

41H 138706-00
41H 138708-00
41H 138710-00
41H 138711-00
41H 30115292
41H 30115371

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. Claims 41H 138706-00, 41H 138708-00, 41H 138710-00, 41H 138711-00, 41H 30115292, and 41H 30115371 appeared in the Preliminary Decree for Basin 41H with Montana Department of Natural Resources and Conservation (DNRC) issue remarks. The claims received late objections from Terry Fluke.

2. On September 8, 1987, Terry Fluke filed an Objection to claims 41H 138708-00, 41H 138710-00, 41H 138711-00. The Objections were too late to be processed for the Basin 41H Temporary Preliminary Decree.

3. On December 23, 2024, the Court Consolidated the claims into this case and set a filing deadline for Terry Fluke to file state whether she would pursue the objections. The Court stated if nothing was filed, it would dismiss the objections and the claims would not change.

4. No response was filed.

5. The late objection issue remarks on these claims can be removed and the Objections dismissed.

6. The remaining issue remarks on these claims are for notice purposes and can 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. *Burkhartsmeier et al. v. Burkharstmeier 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. The issues raised by issue remarks must be resolved as part of the adjudication process pursuant to Section 85-2-248, MCA.

6. If a claimant or objector 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.

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. Post Decree Abstracts of Water Right Claims are 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.

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

Water Right Number: 41H 138706-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ANN S DICKERSON
1380 GATEWAY SOUTH RD
GALLATIN GATEWAY, MT 59730-9790

Priority Date: DECEMBER 31, 1878

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

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: 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		SEWNNE	15	3S	4E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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			SEWNNE	15	3S	4E	GALLATIN

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

Water Right Number: 41H 138708-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: ANN S DICKERSON
1380 GATEWAY SOUTH RD
GALLATIN GATEWAY, MT 59730-9790

Priority Date: JUNE 1, 1866

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 179.52 GPM

***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: 120.00

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		SENWNW	22	3S	4E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: NOBLE DITCH

Period of Use: MAY 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	40.00		NWNW	15	3S	4E	GALLATIN
2	40.00		NENW	15	3S	4E	GALLATIN
3	40.00		SENW	15	3S	4E	GALLATIN

Total: 120.00

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

Water Right Number: 41H 138710-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: ANN S DICKERSON
1380 GATEWAY SOUTH RD
GALLATIN GATEWAY, MT 59730-9790

Priority Date: JUNE 1, 1882

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 364.00 GPM

*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: 120.00

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		SENWNW	22	3S	4E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: NOBLE DITCH

Period of Use: MAY 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	40.00		NWNW	15	3S	4E	GALLATIN
2	40.00		NENW	15	3S	4E	GALLATIN
3	40.00		SENW	15	3S	4E	GALLATIN
Total:	120.00						

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

Water Right Number: 41H 138711-00 STATEMENT OF CLAIM

Version: 6 -- POST DECREE

Status: ACTIVE

Owners: ANN S DICKERSON
1380 GATEWAY SOUTH RD
GALLATIN GATEWAY, MT 59730-9790

Priority Date: JUNE 1, 1883

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 112.20 GPM

***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: 100.00

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		SENWNW	22	3S	4E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: NOBLE DITCH

Period of Use: MAY 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	20.00		S2NWNW	15	3S	4E	GALLATIN
2	40.00		NENW	15	3S	4E	GALLATIN
3	40.00		SENW	15	3S	4E	GALLATIN

Total: 100.00

Remarks:

SPLIT CLAIM NO. 41H 30110968 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

Water Right Number: 41H 30115292 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: ANN S DICKERSON
1380 GATEWAY SOUTH RD
GALLATIN GATEWAY, MT 59730-9790

Priority Date: APRIL 1, 1948

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 5.45 GPM

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: GROUNDWATER

Source Type: GROUNDWATER

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		NWNWNE	15	3S	4E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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			NWNWNE	15	3S	4E	GALLATIN

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.

30115292 30115371

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

Water Right Number: 41H 30115371 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: ANN S DICKERSON
1380 GATEWAY SOUTH RD
GALLATIN GATEWAY, MT 59730-9790

Priority Date: APRIL 1, 1948

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 5.45 GPM

Volume: 1.38 AC-FT

Households: 1

Maximum Acres: 0.15

Source Name: GROUNDWATER

Source Type: GROUNDWATER

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		NWNWNE	15	3S	4E	GALLATIN
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: WELL						

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	0.15		NWNWNE	15	3S	4E	GALLATIN
Total:	0.15						

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.

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