

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
(406) 586-4364  
1-800-624-3270  
watercourt@mt.gov

**FILED**  
03/14/2025  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41H-1143-R-2024  
Nordlund, Julia  
2.00

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

\* \* \* \* \*

CLAIMANTS: Elena A. Wexall; Jeffrey D. Wexall

**CASE 41H-1143-R-2024**  
41H 30069179

**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 30069179 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 claim into case 41H-1143-R-2024.

## FINDINGS OF FACT

1. Claim 41H 30069179 appeared in the Basin 41H Preliminary Decree with the following issue remarks:

THE PRIORITY DATE MAY BE QUESTIONABLE. THE DATE OF FILING THE GW2 , NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION, IS 12/1/1964.

THIS EXEMPT CLAIM WAS FILED ON 06/29/2017. THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41H DECREE ISSUED 09/26/1985.

2. The second remark's purpose is to provide notice to other water users of potential issues with the claim, however, no objections were filed and this remark can be removed.

3. The Water Court issued an Order Setting Filing Deadline for Elena and Jeffrey Wexall to file evidence supporting the claimed priority date by February 18, 2025. The Court stated that if Claimants did not file evidence by the deadline, it would conclude that Claimants agree the priority date of the claim should be 12/1/1964, the date the Notice of Completion was filed.

4. The filing deadline passed and, as of the date of filing of this Master's Report, Claimant did not file evidence or contact the Water Court to resolve the issue remark.

## CONCLUSIONS OF LAW

1. The Water Court has exclusive jurisdiction to determine the extent of all water rights in Montana as they existed prior to July 1, 1973. *In re Deadman's Basin Water Users Ass'n*, 2002 MT 15, ¶ 15; Section 3-7-501, MCA.

2. The Water Court is required to resolve all issue remarks not resolved through the objection process. Section 85-2-248(2), MCA. When resolving issue remarks, the 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.

3. 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.

4. Between January 1, 1962 and July 1, 1973, appropriators of groundwater were required to file both a Notice of Appropriation and a Notice of Completion of Groundwater Appropriation by Means of Well in order to have the priority date relate back to when the water was first diverted and used. If only a Notice of Completion was filed, the priority date is the date the Notice of Completion was filed. Section 89-2913(e), RCM (1965).

5. Pursuant to Section 89-2913(e), RCM (1965), until a Notice of Completion is filed for any use of groundwater instituted after January 1, 1962, “no right to that use of water shall be recognized.”

6. Pursuant to Section 85-2-248(9), MCA, and Rule 22, W.R.Adj.R., when a claimant fails to comply with an Order issued by the Water Court, including an Order issued by a Water Master appointed by the Court, the Court, upon motion, or its own initiative, can: 1) amend the elements of the claim to conform with the information in the claim file or information obtained by the Court, or 2) terminate the claim.

7. Claimants failed to comply with the Water Court’s Order to file evidence and participate in the adjudication process to resolve the issue remarks. Claimants’ failure to comply, combined with the documentation of the Notice of Completion in the claim file, is justification to change the priority date of claim 41H 30069179 from 05/26/1964 to 12/01/1964.

### RECOMMENDATIONS

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

### **ELECTRONICALLY SIGNED AND DATED.**

#### **Service via USPS Mail:**

Elana A. Wexall  
Jeffrey D. Wexall  
202 Houston St  
Nelson, BC V1L 5H2  
CANADA

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

Water Right Number: 41H 30069179 STATEMENT OF CLAIM  
Version: 2 -- POST DECREE  
Status: ACTIVE

Owners: ELANA A WEXALL  
202 HOUSTON ST  
NELSON BC V1L 5H2  
CANADA  
  
JEFFREY D WEXALL  
202 HOUSTON ST  
NELSON BC V1L 5H2  
CANADA

Priority Date: DECEMBER 1, 1964  
Type of Historical Right: FILED  
Purpose (Use): DOMESTIC  
Flow Rate: 21.00 GPM  
Volume: 2.13 AC-FT  
Households: 1  
Maximum Acres: 0.25  
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		NENWSW	11	3S	4E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31  
Diversion Means: WELL  
Subdivision: TRACT/LOT: 5/6 BLOCK: 12  
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	0.25		NENWSW	11	3S	4E	GALLATIN
Total:	0.25						