

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

CLAIMANT: Sharon J. Lodge

CASE 41H-0126-R-2024

41H 110313-00

41H 30007159

41H 30007160

OBJECTOR: Sharon J. Lodge

NOTICE OF INTENT TO APPEAR: Blackwood Dry Creek LP

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 claims 41H 110313-00, 41H 30007159, and 41H 30007160 appeared in the appeared in the Preliminary Decree for Basin 41H with Montana Department of

Natural Resources and Conservation (DNRC) issue remarks. The claims received objections from Claimant Sharon Lodge and a Notice of Intent to Appear from Blackwood Dry Creek LP. To address the issue remarks and the objections, the Water Court consolidated the claim into Water Court Case 41H-0126-R-2024.

FINDINGS OF FACT

1. On March 24, 2025, Claimant submitted a Proposed Resolution of Objections.¹ On March 27, 2025, NOIA stated that it agrees with the proposal apart from a typographical error.

2. Claim 41H 110313-00 received a DNRC issue remark stating that it appears to duplicate Groundwater Certificate 41H 40857-00. Claimant agrees and states 41H 110313-00 should be dismissed.

2. Claimant states the point of diversion for claim 41H 30007159 is more accurately described as SESWNW Sec. 19, Twp. 1S, Rge. 5E. Claimant confirms that South Dry Creek is the accurate source and is diverted into the Spain Ferris ditch at this point of diversion.

3. Claim 41H 30007160 has an issue remark stating the flow rate exceeds the DNRC standard of 17 gpm. This claim is a decreed right and therefore DNRC standards do not overcome the *prima facie* status.

4. Claimant requests no changes be made to claim 41H 30007160.

5. NOIA Blackwood states that its appearance to 41H 30007159 is resolved with these changes.

6. The information provided resolves all issue remarks in this case.

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.

¹ The Proposed Resolution and all other case documents are viewable in the Water Court's FullCourt Enterprise case management system.

2. 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. Burkhartsmeier 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.

3. The evidence entered into the record is sufficient to resolve the issue remarks on this claim and support making the corrections outlined above.

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.

Post Decree Abstracts of Water Right Claim are served with this Report to confirm the recommended corrections 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 110313-00 STATEMENT OF CLAIM**

Version: **3 -- POST DECREE**

Status: **DISMISSED**

Owners: SHARON J LODGE
235 CIRQUE DR
BOZEMAN, MT 59718

Priority Date:

Type of Historical Right:

Purpose (Use): COMMERCIAL

Flow Rate:

Volume:

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: **41H 30007159** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SHARON J LODGE
235 CIRQUE DR
BOZEMAN, MT 59718

***Priority Date:** MAY 1, 1936

***Type of Historical Right:** USE

***Purpose (Use):** IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 2.20 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:** 58.05

***Source Name:** SOUTH DRY 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		SESWNW	19	1S	5E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

***Period of Use:** APRIL 1 TO OCTOBER 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	58.05		W2SW	8	1S	5E	GALLATIN
Total:	58.05						

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.

9719-00 30007159

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41H 9719-00.

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

Water Right Number: **41H 30007160** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SHARON J LODGE
235 CIRQUE DR
BOZEMAN, MT 59718

***Priority Date:** JULY 1, 1894

***Type of Historical Right:** DECREED

***Purpose (Use):** IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 3.32 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:** 58.05

***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		NWSENW	14	2S	4E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: SPAIN-FERRIS DITCH

***Period of Use:** APRIL 1 TO OCTOBER 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	58.05		W2SW	8	1S	5E	GALLATIN
Total:	58.05						

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.

10033-00 30007160

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41H 10033-00.