

Montana Water Court  
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**FILED**  
09/08/2025  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41H-0078-R-2024  
Stern, Anika  
39.00

MONTANA WATER COURT  
UPPER MISSOURI DIVISION  
GALLATIN RIVER  
BASIN 41H  
PRELIMINARY DECREE

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CLAIMANTS: David Richards Childrens TR 1977;  
Dos Perros LLC; **3 Drakes & a Hen LLC**

**CASE 41H-0078-R-2024**  
41H 107323-00

OBJECTOR: Dos Perros LLC

**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

Claim 41H 107323-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H). The claim received issue remarks resulting from pre-decree examination by the DNRC, objections, and counter objections. The Water Court is required to resolve these issue remarks.

### FINDINGS OF FACT

1. David Richards Childrens TR 1977 and Dos Perros LLC (Claimants) are the record owners of claim 41H 107323-00.

2. Claim 41H 107323-00 was decreed with the following Montana Department of Natural Resources (DNRC) issue remark noting potential factual or legal issues identified by the DNRC during its examination of the claim:

SOURCE NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

3. Dos Perros LLC objected to the priority date, source, place of use, and point of diversion of the claim, stating:

THE DNRC INCORRECTLY MODIFIED THIS CLAIM TO BE FROM A DIFFERENT SOURCE. POU/POD AND PRIORITY DATE MAY ALSO BE INCORRECT. THIS OBJECTION IS BASED ON REVIEW OF AVAILABLE DNRC WATER RIGHT RECORDS AND DATASETS.

4. The May 8, 2024 Order Consolidating Case and Order Setting Filing Deadline required that parties file documents resolving the Objections and issue remarks by July 8, 2024. (Doc.<sup>1</sup> 1.00).

5. On July 8, 2024, Claimants filed Notice of Filing of Documents wherein evidence of historical used was supplied to the Court to assert Claimants' requests of modification to claim 41H 107323-00. (Doc. 2.00).

6. On July 16, 2024, Claimants filed Motion to Update Ownership to add 3 Drakes and a Hen LLC as an owner of claim 41H 107232-00. (Doc. 3.00).

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<sup>1</sup> "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

7. On August 22, 2024, the Court filed Order Setting Filing Deadline requiring Claimants to file additional historical evidence to overcome the prima facie status of claim 41H 107323-00. (Doc. 4.00). The Court extended this filing deadline upon motion by Claimants to June 30, 2025. (Doc. 15.00).

8. On June 30, 2025, Claimants filed Notice of Settlement and Filing of Documents in Support (Notice of Settlement) requesting that the following modifications be made to the priority date, source, point of diversion (POD) and place of use (POU):

Priority Date: ~~DECEMBER 31, 1917~~ MAY 1, 1864  
Source Name: ~~HAYES CREEK~~ NORTH COTTONWOOD CREEK  
Point of Diversion and Place of Use:

Qtr	Sec	Sec	Twp	Rge
W2SW		3	1N	5E
SW		3	1N	5E
SESE		4	1N	5E
N2		9	1N	5E

Claimants also requested that the ownership of claim 41H 107323-00 be updated to include 3 Drakes and a Hen LLC. (Doc. 27.00). The parties agree that the corrections made in the Notice of Settlement would resolve Dos Perros LLC's objection to the claim.

9. Evidence filed in the Notice of Settlement showed that Hayes Creek flows through Section 4 and would therefore service the POD/POU in the SESE of Section 4, Township 1N, Range 5E. The evidence also showed that Reese Creek flows through Section 9 and would therefore service the POD/POU in the N2 of Section 9, Township 1N, Range 5E. An Order was issued setting a deadline for the parties to confirm the correct sources for the additional points of diversion and places of use for claim 41H 107323-00 are Hayes Creek for the POD/POU in the SESE of Section 4, Township 1N, Range 5E, and Reese Creek for the POD/POU in the N2 of Section 9, Township 1N, Range 5E. (Doc. 37.00).

10. On August 4, 2025, the parties responded:

- (1) the sources of POD and POU ID 1 should be listed as North Cottonwood Creek;
- (2) the sources of POD and POU ID 2 should be listed as North Cottonwood Creek and Hayes Creek; and
- (2) the sources of POD and POU ID 3 should be listed as Hayes Creek and Reese Creek.

(Doc. 38.00). DNRC database limitations do not permit multiple sources on single points of diversion. Therefore, to list the sources with the applicable points of diversion, this Water Master recommends duplicating the points of diversion in the SESE of Section 4 and the N2 of Section 9, Township 1 North, Range 5 East, Gallatin County:

ID	Qtr	Sec	Twp	Rge
	W2SW	3	1N	5E
1	SW	3	1N	5E
	Source: NORTH COTTONWOOD CREEK			
	Period of Diversion: JANUARY 1 TO DECEMBER 31			
	Diversion Means: LIVESTOCK DIRECT FROM SOURCE			
2	SESE	4	1N	5E
	Source: HAYES CREEK			
	Period of Diversion: JANUARY 1 TO DECEMBER 31			
	Diversion Means: LIVESTOCK DIRECT FROM SOURCE			
3	SESE	4	1N	5E
	Source: NORTH COTTONWOOD CREEK			
	Period of Diversion: JANUARY 1 TO DECEMBER 31			
	Diversion Means: LIVESTOCK DIRECT FROM SOURCE			
4	N2	9	1N	5E
	Source: HAYES CREEK			
	Period of Diversion: JANUARY 1 TO DECEMBER 31			
	Diversion Means: LIVESTOCK DIRECT FROM SOURCE			
5	N2	9	1N	5E
	Source: REESE CREEK			
	Period of Diversion: JANUARY 1 TO DECEMBER 31			
	Diversion Means: LIVESTOCK DIRECT FROM SOURCE			

### PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.
2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.
3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.
4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).
5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water 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. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

8. The party seeking to overcome the prima facie status of a Statement of Claim bears the burden of proof; this burden also applies to a claimant's objection to his own claim. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

9. The Water Court is not bound by parties' settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

#### CONCLUSIONS OF LAW

1. The evidence filed in Claimants' Notice of Settlement overcomes the prima facie status of priority date, ownership, point of diversion, and place of use.

2. There is evidence supports the source for the point of diversion in Section 4 as Hayes Creek and North Cottonwood Creek. Likewise, evidence has been provided supporting the source for the point of diversion in Section 9 as Hayes Creek and Reese Creek.

#### RECOMMENDATIONS

1. The priority date for claim 41H 107323-00 should be modified from December 31, 1917, to May 1, 1864.

2. The ownership should be updated to include 3 Drakes and a Hen LLC.

3. The sources, points of diversion, and places of use should be modified as shown in Finding of Fact No. 10.

4. The issue remark should be removed from claim 41H 107323-00.  
An abstract is attached for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via Electronic Mail:**

Dana Elias Pepper  
Eyvind Ostrem  
dana@riverandrangelaw.com  
eyvind@riverandrangelaw.com  
office@riverandrangelaw.com  
*(Attys for David Richards Childrens TR  
1977; Dos Perros LLC; 3 Drakes & a Hen  
LLC)*

**Caption Updated: 9/8/2025**

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

**Water Right Number:** 41H 107323-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**

3 DRAKES & A HEN LLC  
PO BOX 3111  
BOZEMAN, MT 59772-3111

DAVID RICHARDS CHILDRENS TR 1977  
%RICHARDS DAVID M TRUSTEE  
PO BOX 3111  
BOZEMAN, MT 59772-3111

DOS PERROS LLC  
PO BOX 3111  
BOZEMAN, MT 59772-3111

**Priority Date:** MAY 1, 1864

**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:** HAYES CREEK

**Source Type:** SURFACE WATER

**Source Name:** NORTH COTTONWOOD CREEK

**Source Type:** SURFACE WATER

**Source Name:** REESE 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		SW	3	1N	5E	GALLATIN

**Source Name:** NORTH COTTONWOOD CREEK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		SESE	4	1N	5E	GALLATIN
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**Source Name:** HAYES CREEK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

<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			SW	3	1N	5E	GALLATIN
2			SESE	4	1N	5E	GALLATIN
3			SESE	4	1N	5E	GALLATIN
4			N2	9	1N	5E	GALLATIN
5			N2	9	1N	5E	GALLATIN