

Montana Water Court  
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ELECTRONICALLY FILED

41H-0637-R-2022

September 12, 2022

Montana Water Court

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

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CLAIMANTS: Linda A. Goldan; Virginia L. Zisch

CASE 41H-0637-R-2022  
41H 214916-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Pursuant to Water Right Adjudication Rule 23, written objections to a Master's Report must be filed within **10 days** of the date the Report was filed. If this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this 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 214916-00 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-0637-R-2022.

### FINDINGS OF FACT

1. On December 4, 1995, Linda A. Goldan and Virginia L. Zisck (“Claimants”) filed the Statement of Claim for claim 41H 214916-00, claiming 10 miner’s inches from an unnamed Baker Creek tributary diverted in the NWSWNW of Sec. 5, Twp. 1S, Rge. 4E, Gallatin County for irrigation use. Claimants supported the claimed point of diversion with several maps.
2. Claim 41H 214916-00 appeared in the Basin 41H Preliminary Decree with the following issue remark:  
THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NENENW SEC 23 TWP 3S RGE 5E GALLATIN COUNTY.
3. To address the issue remark, the Water Court set a filing deadline of September 6, 2022, for Claimants to file evidence of the historic point of diversion to resolve the issue remark. The Court stated that if Claimants did not file by the deadline, the issue remark would be removed, and the claim element would remain as it appears on the Preliminary Decree abstract.
4. The filing deadline passed, and Claimants did not file evidence to resolve the point of diversion issue remark.
5. The point of diversion issue remark can be removed, and the claim element can remain NWSWNW, Sec. 5, Twp. 1S, Rge. 4E, Gallatin County.
6. Claim 41H 214916-00 also appeared with a late claim issue remark. The purpose of this issue remark is to provide other water users notice of the late claim status. No objections, counterobjections, or Notices of Intent to Appear were filed. No proceedings are required, the issue remark served its purpose, and can be removed.

## 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. 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.
3. The Water Court is permitted to use information submitted by DNRC, the statements of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims and resolve issue remarks. Section 85-2-231(2), MCA.
4. The point of diversion issue remark placed on claim 41H 214916-00 does not overcome the prima facie status of its Statement of Claim and the claim file information.
5. There is sufficient evidence in the record to resolve and remove the issue remarks on claim 41H 214916-00.

## RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the Water Court make the above-specified changes to claim 41H 214916-00. A post-decree abstract of the claim accompanies this report to confirm the changes have been made in the State's centralized water right records system.

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Julia J. Nordlund  
Senior Water Master

**Service via USPS Mail:**

Linda A. Goldan  
3465 Curtis Lane  
Manhattan, MT 59741

Virginia L. Zisch  
3365 Curtis Ln  
Manhattan, MT 59741-8243

**WATER COURT**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**GALLATIN RIVER**  
**BASIN 41H**

**Water Right Number:** 41H 214916-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Late Claim:** B

**Owners:**

LINDA A GOLDAN  
3465 CURTIS LANE  
MANHATTAN, MT 59741

VIRGINIA L ZISCH  
3365 CURTIS LN  
MANHATTAN, MT 59741 8243

**Priority Date:** JANUARY 1, 1910

**Enforceable Priority Date:** JUNE 30, 1973

CLAIM FILED LATE 12/04/1995 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

**Type of Historical Right:** USE

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER

**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:** 7.00

**\*Source Name** UNNAMED TRIBUTARY OF BAKER 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		NWSWNW	5	1S	4E	GALLATIN

**Period of Diversion:** APRIL 1 TO NOVEMBER 1

**Diversion Means:** PUMP

**Subdivision:** BAKER CREEK MEADOWS TRACT/LOT: 2 BLOCK: 1

**Period of Use:** APRIL 1 TO NOVEMBER 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	7.00		NWSWNW	5	1S	4E	GALLATIN

**Subdivision:** BAKER CREEK MEADOWS TRACT/LOT: 2 BLOCK: 1

**Total:** 7.00