

Montana Water Court  
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**FILED**  
02/02/2024  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41H-0107-R-2023  
Nordlund, Julia  
14.00

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

\*\*\*\*\*

CLAIMANTS: Eggebrecht Liv Trt; Forest W. McKenzie;  
Jennifer C. McKenzie; Kevin P. McKenzie;  
Brittany Murphy; Rodrigues Anderson  
Revocable Trust

**CASE 41H-0107-R-2023**  
41H 27662-00

OBJECTOR: City of Bozeman

NOTICE OF INTENT TO APPEAR: Riverside Country Club

**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. Claim 41H 27662-00 appeared in the Preliminary Decree for Basin 41H with Montana Department of Natural Resources and Conservation (DNRC) issue remarks. The claims received an objection from City of Bozeman and notice of intent to appear from Riverside Country Club.

2. On January 8, 2024, a Withdrawal of Objection was filed by City of Bozeman.

3. No response was filed by any other party.

4. Claim 41H 27662-00 has two issue remarks stating:

POINT OF DIVERSION AND DITCH NAME WERE 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.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON THE EAST GALLATIN RIVER WITH A PRIORITY DATE PREDATING CASE NO. 1594, GALLATIN COUNTY.

5. These issue remarks provide notice to the water users of potential issues. No Objections remain on the claim and the remarks 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. 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.

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. The remaining issue remarks have served their purpose of providing notice of the changes and potential issues and can be removed.

#### 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.**

**Service via USPS Mail:**

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

**Water Right Number:** 41H 27662-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**

FOREST W MCKENZIE  
212 DANA LN  
BELGRADE, MT 59714-8778

JENNIFER C MCKENZIE  
212 DANA LN  
BELGRADE, MT 59714-8778

KEVIN P MCKENZIE  
212 DANA LN  
BELGRADE, MT 59714-8778

BRITTANY MURPHY  
212 DANA LN  
BELGRADE, MT 59714-8778

EGGEBRECHT LIV TRT  
8270 US HIGHWAY 191 S  
MALTA, MT 59538-9543

RODRIGUES ANDERSON REVOCABLE TRUST  
FRANK RODRIGUES & LAURA ANDERSON TTEES  
189 DANA LN  
BELGRADE, MT 59714

SINOPOLI VITO & THERESA REVOCABLE TRUST  
4350 AIRPORT RD  
BELGRADE, MT 59714

**Priority Date:** AUGUST 23, 1865

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.88 CFS

**\*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:** 50.00

**Source Name:** EAST GALLATIN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**ID**                      **Govt Lot**                      **Qtr Sec**                      **Sec**                      **Twp**                      **Rge**                      **County**

1 SENWNE 26 1S 5E GALLATIN

**Period of Diversion:** MAY 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** BECK-NELSON-FLANNERY DITCH

**Period of Use:** MAY 15 TO OCTOBER 15

**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		SWSE	3	1S	5E	GALLATIN
2	10.00		W2SESE	3	1S	5E	GALLATIN
<b>Total:</b>	50.00						