

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

CLAIMANTS: Dorothy M. Hathaway; William J. Hathaway

NOTICE OF INTENT TO APPEAR: Four Corners County Water
& Sewer District

CASE 41H-0834-R-2023
41H 134009-00
41H 134010-00

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. Claims 41H 134009-00 and 41H 134010-00 appeared in the Preliminary Decree for Basin 41H with Montana Department of Natural Resources and Conservation (DNRC) issue remarks. The claims received late objections and a notice of intent to appear from Four Corners County Water & Sewer District.

2. On October 14, 1987, Claimants Dorothy and William Hathaway filed an Objection to these claims to the point of diversion and means of diversion. The Objection was too late to be processed for the Basin 41H Temporary Preliminary Decree.

3. On December 4, 2023, the Court Consolidated the claims into this case and set a filing deadline for the Claimants and NOIA to file documents resolving the late objection. The Court stated if nothing was filed, it would dismiss the objections.

4. No response was filed by any party.

5. The issue remarks on these claims can be removed and the Objections dismissed.

6. No other issue remarks or Objections remain on the claims.

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. *Burkhartsmeyer et al. v. Burkhartsmeyer 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. If a claimant fails to comply with an order issued by the Water Court, the Court may, upon motion or its own initiative, issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R.

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:

Hathaway, Dorothy M.
2471 Magenta Rd
Bozeman, MT 59718-9427

Service Via Electronic Mail:

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

Water Right Number: 41H 134009-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DOROTHY M HATHAWAY
2471 MAGENTA RD
BOZEMAN, MT 59718 9427

WILLIAM J HATHAWAY
2471 MAGENTA RD
BOZEMAN, MT 59718 9427

Priority Date: MAY 1, 1867

Type of Historical Right: DECREED

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: 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		SWNWSE	14	2S	4E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

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			SWNWSE	14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 246				
2			SWNWSE	14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 247				
3			SWNWSE	14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 237				
4			SWNWSE	14	2S	4E	GALLATIN
Subdivision:		RAINBOW SUBD	TRACT/LOT: 236				

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

134009-00

134010-00

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

Water Right Number: 41H 134010-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: DOROTHY M HATHAWAY
 2471 MAGENTA RD
 BOZEMAN, MT 59718 9427
 WILLIAM J HATHAWAY
 2471 MAGENTA RD
 BOZEMAN, MT 59718 9427

Priority Date: MAY 1, 1867
Type of Historical Right: DECREED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
***Flow Rate:** 27.20 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: 6.50
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		SWNWSE	14	2S	4E	GALLATIN
Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	HEADGATE					
Ditch Name:	HATHAWAY PUMP SITE					
Period of Use:	APRIL 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	1.00		SWNWSE	14	2S	4E	GALLATIN
Subdivision:	RAINBOW SUB TRACT/LOT: 246						
2	1.00		SWNWSE	14	2S	4E	GALLATIN
Subdivision:	RAINBOW SUB TRACT/LOT: 247						
3	2.50		SWNWSE	14	2S	4E	GALLATIN
Subdivision:	RAINBOW SUB TRACT/LOT: 237						
4	2.00		SWNWSE	14	2S	4E	GALLATIN

Subdivision: RAINBOW SUB TRACT/LOT: 236

Total: 6.50

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

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FILE REFLECTS AUTHORIZATION TO CHANGE POINT OF DIVERSION. COMPLETED 03/16/1983. SEE 41H 134010-00. THE ABOVE FLOW RATE AND VOLUME DEPICT THE HISTORIC USE. COMPLETED AUTHORIZATION TO CHANGE REFLECTS PRESENT USE OF 73 GPM UP TO 15.5 ACRE-FEET.