

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

41H-0429-R-2021

December 10, 2021

Montana Water Court

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

* * * * *

CLAIMANTS: Douglas Boylan; Sandra L Hart; Isaacs Red
Deer Creek Ranch, LLC.

CASE 41H-0429-R-2021

41H 114974-00
41H 114975-00
41H 114976-00
41H 213948-00

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, conclusion 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. On May 17, 2018, DNRC employee Nathaniel T. Ward filed a Memorandum forwarding several water right split requests to the Water Court. The 2010 requests to split the claims 41H 114974-00, 41H 114975-00, 41H 114976-00, and 41H 213948-00 were among those forwarded to the Court.

2. As the decree in Basin 41H was about to be issued, issue remarks were placed on the claims so that the proposed splitting of the claims could be addressed later.

Additional issue remarks were placed on the claims. Claims 41H 114974-00, 41H 114975-00, 41H 114976-00 were decreed with notice-type issue remarks. Claim 41H 213948-00 was decreed with an issue remark noting that the decreed point of diversion was in question, however the DNRC did not substantiate the issue remark; additionally claim 41 213948-00 is a late-filed claim.

3. On August 19, 2021, this Master consolidated claims 41H 114974-00, 41H 114975-00, 41H 114976-00, and 41H 213948-00 into Case 41H-0429-R-2021 for the purpose of addressing the proposed split issue remarks. An Order Setting Filing Deadline was issued explaining that the DNRC routinely asks parties to fill out the DNRC Ownership Update Divided Interest forms but does not inform parties that they are not actually required to divide the claim into separate claims for each owner. Additionally, new ownership updates have taken place since the 2010 split requests were submitted to the DNRC. To determine if the parties wished to split claims 41H 114974-00, 41H 114975-00, 41H 114976-00, and 41H 213948-00, a deadline was set for the parties to file proposed abstracts showing specific elements of the claims. The Order stated that if nothing was filed by the deadline, this Master would conclude the parties do not wish to split the claims and proceedings in this Case will be closed. The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

4. Upon request of Claimant Douglas Boylan, an extension was granted to provide time for him to work with the DNRC.

5. Nothing was filed by the extended deadline to support the splitting of claims 41H 114974-00, 41H 114975-00, 41H 114976-00, and 41H 213948-00.

CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is *prima facie* proof of its content. Section 85-2-227, MCA. This *prima facie* validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

4. The point of diversion and ditch name issue remarks decreed on claims 41H 114974-00, 41H 114975-00, 41H 114976-00 are notice-type issue remarks. As no objections were filed, no further proceedings are required.

5. Claim 41H 213948-00 is a late claim. The late claim issue remark that was decreed on the claim gave notice that the claim could be subordinate and therefore junior to certain permits and reservations of water. Any party asserting a superior claim to water based on a permit or reservation was required to file an objection to that late claim during the Basin 41H objection period. Because no such objections were filed, this remark can now be removed from the claim.

RECOMMENDATION

1. The issue remarks should be removed from claims 41H 114974-00, 41H

114975-00, 41H 114976-00, and 41H 213948-00 with no changes to the elements of the claims.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended changes have been made in the DNRC's water rights database.

Anika M. Stern
Senior Water Master

Service via USPS Mail:

Douglas Boylan
Sandra L Hart
9447 Gant Rd
Bozeman, MT 59718-9114

Isaacs Red Deer Creek Ranch, LLC.
PO Box 1389
Canadian, TX 79014

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

Water Right Number: **41H 114974-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
DOUGLAS BOYLAN
9447 GANT RD
BOZEMAN, MT 59718 9114

SANDRA L HART
9447 GANT RD
BOZEMAN, MT 59718 9114

ISAACS RED DEER CREEK RANCH LLC
PO BOX 1389
CANADIAN, TX 79014

Priority Date: JUNE 1, 1882

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: SOUTH COTTONWOOD 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		NWNWNW		21	3S	5E GALLATIN

Period of Diversion: MAY 15 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: GOOCH-GANT DITCH

Period of Use: MAY 15 TO OCTOBER 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			S2	32	2S	5E	GALLATIN

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.

114974-00 42373-00

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

Water Right Number: **41H 114975-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
DOUGLAS BOYLAN
9447 GANT RD
BOZEMAN, MT 59718 9114

ISAACS RED DEER CREEK RANCH LLC
PO BOX 1389
CANADIAN, TX 79014

Priority Date: JUNE 1, 1870

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 1.25 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:** 77.00

Source Name: SOUTH COTTONWOOD CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNWNW	21	3S	5E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: GOOCH-GANT DITCH

Period of Use: MAY 1 TO OCTOBER 1

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	4.00		W2SWNE	32	2S	5E	GALLATIN
2	1.00		SENENW	32	2S	5E	GALLATIN
3	32.00		SENW	32	2S	5E	GALLATIN
4	1.00		NWSESW	32	2S	5E	GALLATIN
5	2.00		NWNWSE	32	2S	5E	GALLATIN
6	37.00		NESW	32	2S	5E	GALLATIN
Total:	77.00						

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.

42373-00 114975-00

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.

114975-00 114976-00

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

Water Right Number: **41H 114976-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
DOUGLAS BOYLAN
9447 GANT RD
BOZEMAN, MT 59718 9114

SANDRA L HART
9447 GANT RD
BOZEMAN, MT 59718 9114

ISAACS RED DEER CREEK RANCH LLC
PO BOX 1389
CANADIAN, TX 79014

Priority Date: JUNE 1, 1870

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: SOUTH COTTONWOOD 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		NWNWNW	21	3S	5E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: GOOCH-GANT DITCH

Period of Use: MAY 1 TO OCTOBER 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			S2	32	2S	5E	GALLATIN

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.

114975-00 114976-00

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

Water Right Number: **41H 213948-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners:
DOUGLAS BOYLAN
9447 GANT RD
BOZEMAN, MT 59718 9114

SANDRA L HART
9447 GANT RD
BOZEMAN, MT 59718 9114

ISAACS RED DEER CREEK RANCH LLC
PO BOX 1389
CANADIAN, TX 79014

Priority Date: DECEMBER 31, 1883

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 05/15/1989 . 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/FLOOD

Flow Rate: 3.50 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: 93.00

Source Name: UNNAMED TRIBUTARY OF SOUTH DRY CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWNW	4	3S	5E	GALLATIN

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Period of Use: MAY 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	12.00		SWNE	32	2S	5E	GALLATIN

2	70.00	E2SE	32	2S	5E	GALLATIN
3	11.00	E2W2SE	32	2S	5E	GALLATIN
Total:	93.00					

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.

42370-00 213948-00