

Montana Water Court
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ELECTRONICALLY FILED

41H-0475-R-2021

December 7, 2021

Montana Water Court

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

CLAIMANTS: W. Lee Stokes; Judy Stokes; Charmaine SL
Revocable Living Trust

CASE 41H-0475-R-2021
41H 101121-00

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. The owners of claim 41H 101121-00 were ordered to meet with the DNRC to address ownership issues in this Case and the following unresolved issue remarks:

THE OWNERSHIP AND PLACE OF USE FOR THIS CLAIM MAY BE INCORRECT. SEE CASE 41H 97.

2. On November 1, 2021, DNRC Water Resource Specialist Mary Crable filed a Memorandum indicating that the place of use was underclaimed on the Statement of Claim and recommending the following place of use changes be made to claim 41H 101121-00:

Place of Use:							
<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	19.9		S2	SWNE 33	2S	SE	GALLATIN
2	4.3		S	WSENE 33	2S	SE	GALLATIN
3	4.6		NW	NESE 33	2S	SE	GALLATIN
4	35.9		NW	SE 33	2S	SE	GALLATIN
Total	64.7						

3. To determine if the Claimants agreed or disagreed with Ms. Crable's recommendations, an Order Setting Filing Deadline was issued. The Order set a deadline for the Claimants to comment whether they agreed or disagreed with the proposed changes to the maximum acres and place of use for claim 41H 101121-00. The Order indicated that if nothing was filed by the deadline, this Master would conclude the Claimants agreed the changes should be made to claim 41H 101121-00. 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.

Nothing was filed.

PRINCIPLES AND CONCLUSIONS 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. 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.

2. 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.

RECOMMENDATIONS

1. Claim 41H 101121-00 should be changed as described in Finding of Fact No. 2.

2. The issue remark should be removed from the claim.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm the terms of the claim in the state's centralized record system.

Anika M. Stern
Senior Water Master

Service via USPS Mail:

Lee W Stokes
Judy Stokes
8535 Cottonwood Rd
Bozeman, MT 59718-8922

Charmaine SL Revocable Living Trust
Charmaine Bonvicino S L Trustee
8551 Cottonwood Rd
Bozeman, MT 59718-8922

(Potential Owners)

Eric Wayne Kolman
Valerie C Kolman
8545 Cottonwood Rd
Bozeman, MT 59718-8922

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

Water Right Number: 41H 101121-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JUDY STOKES
8535 COTTONWOOD RD
BOZEMAN, MT 59715

W LEE STOKES
8535 COTTONWOOD RD
BOZEMAN, MT 59715

BONVICINO, CHARMAINE SL REVOCABLE LIVING TRUST
8551 COTTONWOOD RD
BOZEMAN, MT 59718

Priority Date: OCTOBER 31, 1869

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 246.90 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: 64.70

Source Name: HYALITE 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		NESENE	4	3S	5E	GALLATIN

Period of Diversion: APRIL 10 TO NOVEMBER 10

Diversion Means: HEADGATE

Ditch Name: PLUMB DITCH

Period of Use: APRIL 10 TO NOVEMBER 10

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	19.90		S2SWNE	33	2S	5E	GALLATIN
2	4.30		SWSENE	33	2S	5E	GALLATIN
3	4.60		NWNESE	33	2S	5E	GALLATIN
4	35.90		NWSE	33	2S	5E	GALLATIN

Total: 64.70