

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

\* \* \* \* \*

CLAIMANTS: Flying A Holdings LLC

OBJECTORS: CNR Properties LLC

**CASE 41H-0046-R-2020**

41H 122615-00

41H 122616-00

41H 122618-00

---

**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. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within **10 days** of the date of the Master's Report. 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**

Claims 41H 122615-00 and 41H 122616-00 are sprinkler/flood irrigation claims. Claim 41H 122618-00 is a domestic claim. The ownership of the claims is currently listed as Flying A Holdings, LLC (Flying A). The claims appeared in the Preliminary Decree for Basin 41H and underwent pre-decree examination process by the Department of Natural Resources and Conservation (DNRC). The claims did not receive any issue remarks. The claims received Objections from CNR Properties, LLC (CNR), to the ownership of the claims. These claims were consolidated into Water Court Case 41H-0046-R-2020.

## **FINDINGS OF FACT**

1. On June 14, 2021, CNR filed a Motion to Correct Ownership. The Motion requested the Court to change the ownership of the claims from Flying A to CNR.
2. The Motion states that CNR is the owner of the water right claims because it owns the real property in which the claims are appurtenant.
3. The Motion provides the chain of title for the real property and the claims.
4. The general chain of title for the claims is as follows:
  - A. The original claimant, Kenneth Hollar, transferred the land and water rights to Donald S. Gillam, Mae Gillam, and Tina Gillam according to a DNRC Transfer Update in the claims' files.
  - B. At an unknown date, David Groshens received an interest in the real property and water rights. However, an update in ownership was never filed with the DNRC.
  - C. The Gillams and Groshens transferred the real property in which the claims are appurtenant to CNR on April 15, 2002, via warranty deeds.
  - D. The Gillams filed a DNRC Water Right Ownership Update form (Ownership Update) on May 5, 2006, transferring the water right to Flying A in the claims' files.
5. The warranty deeds transferring the real property from the Gillams and Groshens to CNR also transferred the water rights associated with claims 41H 122615-

00, 41H 122616-00, and 41H 122618-00. The relevant deeds from Groshens were silent to the appurtenant water rights and the deed from the Gillams expressly transferred all appurtenant water rights.

6. It appears that Gillams did not have an ownership interest in the water rights at the time the Ownership Update was filed to transfer the water rights to Flying A.

7. Flying A was contacted by CNR and agrees with CNR's analysis and to the change in ownership.

### **CONCLUSIONS OF LAW:**

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, 85-2-102(12), 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.

3. 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.

4. 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.

5. 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.

6. The Motion's analysis of the chain of title and attached deeds indicates that CNR owns the real property appurtenant to claims 41H 122615-00, 41H 122616-00, and 41H 122618-00 and the claims themselves.

7. The Motion shows that the Gillams no longer had an ownership interest in the claims and could not transfer the claims to Flying A in 2006 by an Ownership Update or by law. The claims were not validly transferred to Flying A and it is not an owner.

8. Flying A should be removed from the ownership of the claims and it should be changed to:

CNR Properties, LLC  
PO Box 743  
Gallatin Gateway, MT 59730

9. The Motion resolves the Objections to the ownership of the claims by CNR.

### **RECOMMENDATIONS**

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above for claims 41H 122615-00, 41H 122616-00, and 41H 122618-00.

Post Decree Abstract of Water Right Claims 41H 122615-00, 41H 122616-00, and 41H 122618-00 are served with this Report to the changes have been made in the State's centralized water right record system.

---

Julia J. Nordlund  
Senior Water Master

**Service via USPS Mail:**

Flying A Holdings LLC  
c/o John Dunlap  
1627 W Main St #223  
Bozeman, MT 59715

Cindy E. Younkin  
Tyler P. Mullooney  
McLean, Younkin, & Willett, PLLC  
2066 Stadium Drive, Suite 101  
Bozeman, MT 59715  
(406) 586-0027  
[cyounkin@bozeman.legal](mailto:cyounkin@bozeman.legal)

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

**Water Right Number:** 41H 122615-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** CNR PROPERTIES LLC  
PO BOX 743  
GALLATIN GATEWAY, MT 59730

**Priority Date:** DECEMBER 31, 1933

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 60.00 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:** 85.00

**Source Name:** SPRING, UNNAMED TRIBUTARY OF WEST GALLATIN RIVER

**Source Type:** GROUNDWATER

**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		NWNWSW	26	2S	4E	GALLATIN

**Period of Diversion:** APRIL 1 TO NOVEMBER 30

**Diversion Means:** HEADGATE

**Period of Use:** APRIL 1 TO NOVEMBER 30

**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	55.00		N2SW	26	2S	4E	GALLATIN
2	30.00		SEnw	26	2S	4E	GALLATIN

**Total:** 85.00

---

**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.

122609-00	122610-00	122611-00	122612-00	122613-00	122614-00
122615-00	122616-00				

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.

122606-00

122615-00

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

**Water Right Number:** 41H 122616-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** CNR PROPERTIES LLC  
PO BOX 743  
GALLATIN GATEWAY, MT 59730

**Priority Date:** DECEMBER 31, 1933

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 50.00 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:** 85.00

**Source Name:** SPRING, UNNAMED TRIBUTARY OF WEST GALLATIN RIVER

**Source Type:** GROUNDWATER

**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		SESWNW	26	2S	4E	GALLATIN

**Period of Diversion:** APRIL 1 TO NOVEMBER 30

**Diversion Means:** HEADGATE

**Period of Use:** APRIL 1 TO NOVEMBER 30

**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	55.00		N2SW	26	2S	4E	GALLATIN
2	30.00		SESW	26	2S	4E	GALLATIN
<b>Total:</b>	85.00						

---

**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.

122609-00	122610-00	122611-00	122612-00	122613-00	122614-00
122615-00	122616-00				



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.

122605-00

122616-00

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

**Water Right Number:**      **41H 122618-00**      STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:** ACTIVE

**Owners:**                      CNR PROPERTIES LLC  
                                     PO BOX 743  
                                     GALLATIN GATEWAY, MT 59730

**Priority Date:**              APRIL 6, 1970

**Type of Historical Right:**      USE

**Purpose (Use):**              DOMESTIC

**Flow Rate:**                25.00 GPM

**Volume:**                  1.50 AC-FT

**Households:**              1

**Maximum Acres:**          0.50

**Source Name:**              GROUNDWATER

**Source Type:**              GROUNDWATER

**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		SESENW	26	2S	4E	GALLATIN

**Period of Diversion:**      JANUARY 1 TO DECEMBER 31

**Diversion Means:**        WELL

**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	0.50		SESENW	26	2S	4E	GALLATIN

**Total:**                      0.50