

41H-0329-R-2021

July 21, 2021

Montana Water Court

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

* * * * *

CLAIMANTS: GM Ranch LLLP; Green Mountain Red Angus
Inc.

NOTICE OF INTENT TO APPEAR: City of Three Forks

CASE 41H-0329-R-2021

41H 15839-00

41H 49000-00

41H 210966-00

41H 214168-00

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. Because 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

Claim 41H 15839-00 is a groundwater claim. Claim 41H 49000-00 is a sprinkler/flood irrigation claim. Claim 41H 210996-00 is a sprinkler irrigation claim. Claim 41H 214168-00 is a sprinkler/flood irrigation claim. The claims are owned by GM Ranch LLP. The claims appeared in the Gallatin Basin (Basin 41H) Preliminary Decree with Department of Natural Resources and Conservation issue remarks. Claim 15839-00 received a late Objection from former claimant James D. Morton and Ronald Young to the point of diversion and place of use as well as a Notice of Intent to Appear from the City of Three Forks. Claim 41H 49000-00 received a late Objection on August 11, 1995, by former claimant James D. Morton to the priority date. Claim 15839-00 received a late Objection from former claimant James D. Morton on January 30, 1992, and Ronald Young on April 14, 1981, to the point of diversion and place of use as well as a Notice of Intent to Appear from the City of Three Forks.

FINDINGS OF FACT

1. The Court provided the Objectors James D. Morton and Ronald Young a filing deadline of June 24, 2021, to assume or proceed with the late objection. The order notified the Objectors that if nothing is filed by the deadline, the late Objections would be dismissed.
2. The deadline passed and nothing was filed by the late Objectors to date.
3. There are no other objections to these claims.
4. Claim 41H 210966 received issue remarks questioning the claimed place of use and acres irrigated based on available data.
5. The issue remarks do not specify the available data analyzed by the DNRC, nor does it provide the approximate actual acres irrigated the claim abstract should reflect from the analysis.
6. The remaining issue remarks on these claims notify Claimants and water users of DNRC modifications to elements of the claims, late filings, and late objections.

The issue remarks did not receive any objections.

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. Burkartsmeier 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. 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, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R.

6. Objectors failed to assume or proceed with the late Objections by the deadline set by the Court. Dismissing the late Objections is a just sanction for failing to meet the deadline.

7. Section 85-2-248(2), MCA, requires that the Montana Water Court resolve all issue remarks that are not resolved through the objection process.

8. 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.

9. 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 resolve issue remarks. Section 85-2-231(2), MCA.

10. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

11. The DNRC issue remarks questioning the place of use and acres irrigated of claim 41H 210966-00 do not provide enough evidence to overcome the prima facie status of the Statement of Claim. The elements will remain as they appear on the claim abstract and the issue remarks should be removed.

12. The remaining issue remarks to provide notice to Claimants and water users have served their purpose to provide basin-wide notice and can be removed.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, the changes recommended above in the Findings of Fact should be adopted for claims 41H 15839-00, 41H 49000-00, 41H 210966-00, and 41H 214168-00.

Post Decree Abstracts of Water Rights Claims are served with the Report to confirm that the recommendations have been made in the State's centralized water right record system.

Julia J. Nordlund
Senior Water Master

Service via USPS Mail:

GM Ranch LLLP
2431 Logan Trident Road
Three Forks, MT 59752

Green Mountain Red Angus Inc.
2431 Logan Trident Road
Three Forks, MT 59752

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

Water Right Number: **41H 15839-00** STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: GM RANCH LLLP
 2431 LOGAN TRIDENT RD
 THREE FORKS, MT 59752

 GREEN MOUNTAIN RED ANGUS INC
 2431 LOGAN TRIDENT RD
 THREE FORKS, MT 59752

Priority Date: JULY 23, 1890

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 25.00 GPM

Volume: 3.00 AC-FT

Households: 2

Maximum Acres: 2.00

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		NWSENE	22	2N	2E	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	2.00		NWSENE	22	2N	2E	GALLATIN

Total: 2.00

Remarks:

REPLACEMENT WELL-AUTHORIZATION TO CHANGE ISSUED 02/24/1992. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE.

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

Water Right Number: **41H 49000-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GM RANCH LLLP
2431 LOGAN TRIDENT RD
THREE FORKS, MT 59752

Priority Date: JUNE 4, 1885

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 421.70 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:** 24.80

Source Name: JACKSON 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		NENENE	1	2S	7E	GALLATIN

Period of Diversion: MAY 1 TO NOVEMBER 30

Diversion Means: HEADGATE

Ditch Name: BYRD DITCHES

Period of Use: MAY 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	24.80		SE	2	2S	7E	GALLATIN

Total: 24.80

Remarks:

IMPLIED CLAIM NO. 41H 214168-00 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

Water Right Number: 41H 210966-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: GM RANCH LLLP
2431 LOGAN TRIDENT RD
THREE FORKS, MT 59752

Priority Date: NOVEMBER 11, 1898

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 08/15/1983 . 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

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 208.00 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 15.00

Source Name: UNNAMED TRIBUTARY OF JACKSON 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		SE	NW	SE	SE	GALLATIN

Period of Diversion: MAY 1 TO NOVEMBER 30

Diversion Means: DAM

Subdivision: SEE REMARK FOR SUBDIVISION INFORMATION

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NE	NW	SE	SE	GALLATIN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 13.00 FEET

Depth: 10.00 FEET

Surface Area: 0.10 ACRES

Capacity: 0.40 ACRE-FEET

THE CAPACITY, DAM HEIGHT, MAXIMUM DEPTH AND SURFACE AREA HAVE
BEEN ESTIMATED BY DNRC.

Period of Use: MAY 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	15.00		E2NW	2	2S	7E	GALLATIN
Total:	15.00						

Remarks:

APPLICATION TO CHANGE RECEIVED 08/15/1983 FOR CHANGE IN PLACE OF USE.

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

Water Right Number: 41H 214168-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GM RANCH LLLP
2431 LOGAN TRIDENT RD
THREE FORKS, MT 59752

***Priority Date:** MAY 1, 1970

***Type of Historical Right:** USE

***Purpose (Use):** IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 124.10 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:** 7.30

***Source Name:** JACKSON 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		NENENE	1	2S	7E	GALLATIN

Period of Diversion: MAY 1 TO NOVEMBER 30

Diversion Means: HEADGATE

Ditch Name: BYRD DITCHES

***Period of Use:** MAY 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	7.30		N2S2SE	2	2S	7E	GALLATIN

Total: 7.30

Remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41H DECREE ISSUED 09/26/1985.

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO.
41H 49000-00.