

41H-1059-R-2021

July 1, 2021

Montana Water Court

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

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CLAIMANTS: Christy Lloyd; Ronald Lloyd; Knox Pilati

CASE 41H-1059-R-2021  
41H 138796-00

**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 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 mail 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**

INTRODUCTION

Water right claim 41H 138796-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with a point-of-diversion issue remark received during the Department of Natural Resources and Conservation's (DNRC) review in preparation of the preliminary decree.

The Water Court consolidated the water right claim into 41H-1059-R-2021 and set a filing deadline for the claim's listed owners in DNRC's water rights database—Ron and Christy Lloyd, and Knox Pilati—to file information with the court verifying the location of the headgate.

On March 30, 2021, Ron and Christy Lloyd filed information, including the ownership update paperwork it had previously submitted to DNRC, indicating they sold their usufruct interest in the water right to Sara Finkle in November 2020. Sara Finkle filed ownership update paperwork she had previously submitted to DNRC. Finkle later filed a deed evidencing current ownership of the water right claim.

Additionally, Raymond Bradley Lewis filed a response indicating he wished to help the court resolve ownership issues. The filing includes a DNRC Ownership Update form (Form No. 641) indicating the Lloyds sold 19.3 acres of the place of use associated with the water right to Raymond and Trisha Lewis.

The Water Court held a June 16, 2021 status conference attended by Finkle, but not the Lloyds, Knox Pilati, or Raymond Lewis.

The Water Court presently resolves the issue in this case.

### ISSUES

1. *Whether a preponderance of the evidence supports modifying the point of diversion/means of diversion for water right claim 41H 138796-00.*

### APPLICABLE LAW

“The Montana [W]ater [C]ourt has a statutory obligation and the exclusive authority to adjudicate claims of existing water rights.” Rule 1(a), W.R.Adj.R. The Water Court resolves issue remarks before issuance of a final decree and may use information submitted by the DNRC, the statement of claim, and any other data obtained by the court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

A properly filed statement of claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628. The party seeking

to overcome the prima facie status of a statement of claim, including a claimant objecting to his or her own claim, bears the burden of proof. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

The Water Court may correct a clerical mistake found in a judgment, order, or other part of the record on motion or on its own, with or without notice. Rule 60(a), M.R.Civ.P.

### DISCUSSION

*1. Whether a preponderance of the evidence supports modifying the point of diversion/means of diversion for water right claim 41H 138796-00.*

Water right claim 41H 138796-00 is a flood-irrigation use right for surface water from Limestone Creek in Gallatin County, Montana. The preliminary decree abstract indicates the claim's means of diversion is a headgate that diverts water from the source in the SWSWSE of Section 30, Township 2S, Range 6E, Gallatin County.

However, the notice filed by Raymond Bradley Lewis includes a DNRC Ownership Update form (Form No. 641) indicating the Lloyds sold 19.3 acres of the place of use associated with the water right to Raymond and Trisha Lewis. The forms and attached maps indicate the place of use and point of diversion for water right claim 41H 138796-00 are in Section 32, Township 2S, Range 6E, Gallatin County, and not Section 30, as stated on the claim's preliminary decree abstract. Furthermore, an information remark appearing on the claim's abstract states: "AUTHORIZATION TO CHANGE THE POINT OF DIVERISON AND PLACE OF USE ISSUED 11/16/1993. NOTICE OF COMPLETION DUE 12/31/1994 SEE 41H 138796-00." Change authorization is within the purview of the DNRC. The post-1973 abstract reflecting the change authorization indicates the points of diversion and place of use are in Section 32, Township 2S, Range 6E, Gallatin County.

While the court has the authority to adjudicate pre-1973 water rights, and the claim's point of diversion and place of use were originally claimed in Section 30, Township 2S, Range 6E, Gallatin County, a preponderance of the evidence supports the point of diversion and place of use were and are in Section 32, Township 2S, Range 6E, Gallatin County, and not in Section 30. The Water Court corrects this error by modifying the section from Section 30, Township 2S, Range 6E, Gallatin County, to Section 32, Township 2S, Range 6E, Gallatin County, on the claim's post-decree abstract.

Furthermore, an issue remark appearing on the claim states:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON THE WEST GALLATIN WITH A PRIORITY DATE PREDATING CASE NO. 1596, GALLATIN COUNTY.

No information before the court indicates the reason Case No. 1596, Gallatin County, does not include claim 41H 138796-00. The priority-date issue remark is not supported by evidence in the record sufficient to overcome the prima facie status afforded to the claim's priority date. The water right claim did not receive objections, no additional proceedings are required, and the issue remark can be removed.

While the court discussed updating ownership with Sara Finkle, and Finkle filed a deed indicating she currently co-owns the water right, DNRC will update ownership of this water right claim when it processes the filed Ownership Update Forms filed by both Finkle and Raymond and Trisha Lewis. The court does not update ownership at this time to reduce further confusion.

#### RECOMMENDATIONS

This Water Master recommends the Water Court to remove the resolved point-of-diversion issue remark and to correct the legal land description for the point of diversion and place of use from Section 30, Township 2S, Range 6E, Gallatin County, to **Section 32**, Township 2S, Range 6E, Gallatin County.

The Water Court attaches a post-decree abstract of the water right claim to this Master's Report to evidence the changes made.

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Kirsa Shelkey  
Water Master  
*she/her/hers*

**Service via USPS Mail:**

Christy Lloyd  
Ronald Lloyd  
877 Balboa Ave  
Pacific Grove, CA 93950

Knox Pilati  
5480 Sourdough Rd  
Bozeman, MT 59715

***Potential Owner:***

Sara Finkle  
433 West Smuggler St  
Aspen, CO 81611

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

**Water Right Number:** 41H 138796-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:**

RAYMOND B LEWIS  
3381 SOURDOUGH RD  
BOZEMAN, MT 59715

TRISHA A LEWIS  
3381 SOURDOUGH RD  
BOZEMAN, MT 59715 9261

CHRISTY LLOYD  
877 BALBOA AVE  
PACIFIC GROVE, CA 93950

RONALD LLOYD  
877 BALBOA AVE  
PACIFIC GROVE, CA 93950

KNOX PILATI  
5480 SOURDOUGH RD  
BOZEMAN, MT 59715

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT MAY BE SPLIT INTO SEPARATE WATER RIGHTS AFTER FINAL DECREE UPON REQUEST OF THE OWNERS.

**Priority Date:** JULY 31, 1866

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 3.79 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:** 100.00

**Source Name:** LIMESTONE 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		SWSWSE	32	2S	6E	GALLATIN

**Period of Diversion:** APRIL 15 TO OCTOBER 31

**Diversion Means:** HEADGATE

**Period of Use:** APRIL 15 TO OCTOBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	100.00		SE	32	2S	6E	GALLATIN	
<b>Total:</b>	100.00							

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**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.

138795-00      138796-00      138799-00

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME PLACE OF USE AND PERIOD OF DIVERSION.

9015-00      138796-00

AUTHORIZATION TO CHANGE THE POINT OF DIVERISON AND PLACE OF USE ISSUED 11/16/1993. NOTICE OF COMPLETION DUE 12/31/1994 SEE 41H 138796-00