

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

41H-0062-R-2021
 September 2, 2021

Montana Water Court

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

CLAIMANTS: Henderson Place LLC; Frank W Morgan;
 To LLC

NOTICE OF INTENT TO APPEAR: Bitz Grain & Cattle Corp
 ON MOTION OF THE MONTANA WATER COURT

CASE 41H-0062-R-2021
 41H 138713-00
 41H 138720-00
 41H 138721-00
 41H 138722-00
 41H 214167-00

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
FINDINGS OF FACT

1. Claims 41H 138713-00, 41H 138720-00, 41H 138721-00, 41H 138722-00, 41H 214167-00 appeared in the Preliminary Decree for Basin 41H with Montana Department of Natural Resources and Conservation (DNRC) issue remarks.

2. The claims did not receive objections but received a notice of intent to appear from Bitz Grain.

3. The claims were called in on-motion by the Court over decree exceeded concerns. They were then consolidated into case 41H-0062-R-2021.

4. These claims are all decreed rights based on Alonso's portion of District Court Case 4002, Reynolds Creek.

5. Alonso was entitled to 30 miner's inches with a June 30, 1870 priority date.

6. Claims 41H 138713-00 and 41H 214167-00 each have a flow rate of 336.6 GPM (30 miner's inches each). The rest of the claims in this case are stock rights with no claimed flow rate, however even one livestock unit drinking would also exceed the decreed amount of 30 miner's inches.

7. Claimants were given until July 27, 2021 to file information resolving issue remarks and the Court's on-motion concerns. If nothing was filed by the deadline, the Court stated a multiple use remark would be put on the claims stating the following:

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.

8. The Court also stated that if no response is filed, claims 41H 138713-00 and 41H 214167-00 are implied claims and will receive an additional remark stating they each share a flow rate of 336.6 GPM.

9. Claimants did not file anything.

10. On August 10, 2021, NOIA party Bitz Grain responded that the multiple use remark would resolve its NOIA to these claims.

11. The remaining issue remarks regarded modifications made by DNRC or priority date predating the decree. The purpose of these remarks was to serve notice of the change to water users.

12. The remarks have served their purpose and can be removed.

CONCLUSIONS OF LAW

1. 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.

2. A properly filed Statement of Claim for Existing Water Right is *prima facie* proof of its content. Section 85-2-227, MCA. This *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.

3. 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.

4. 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.

5. The issues raised by issue remarks must be resolved as part of the adjudication process pursuant to Section 85-2-248, MCA.

6. 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.

7. The Objection List issued in this basin gave all water users notice of the possible correction of the elements addressed in this Master's Report. This notice is reasonably calculated to inform parties of proceedings affecting their water rights.

8. For the above-mentioned reasons, the claims in this case should be modified as shown on the attached abstracts to resolve all issue remarks and to accurately reflect historical use.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified above to correct the Preliminary Decree for this Basin. Post Decree Abstracts of Water Right Claims are served with this Report to confirm that the recommended changes have been made in the state's centralized record system.

Julia J. Nordlund
Senior Water Master

Service Via Electronic Mail:

Dana Elias Pepper
Bina R. Peters
River and Range Law, PLLC
PO Box 477
Bozeman, MT 59771-0477
(406) 599-7424
dana@riverandrangelaw.com
bina@riverandrangelaw.com
office@riverandrangelaw.com

Service via USPS Mail:

Henderson Place LLC
Frank W Morgan
1300 Mount Ellis Ln
Bozeman, MT 59715-9249

TO LLC
27600 Rocky Mountain Rd
Belgrade, MT 59714

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

Water Right Number: **41H 138713-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
FRANK W MORGAN
1300 MOUNT ELLIS LN
BOZEMAN, MT 59715 9249

HENDERSON PLACE LLC
1300 MOUNT ELLIS LN
BOZEMAN, MT 59715 9249

TO LLC
27600 ROCKY MOUNTAIN RD
BELGRADE, MT 59714

Priority Date: JUNE 30, 1870

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 336.60 GPM

THE WATER RIGHT NUMBERS 41H 138713-00 AND 41H 214167-00 SHARE A FLOW RATE OF 336.6 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:** 11.80

***Source Name:** REYNOLDS 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		SENESE	23	2N	4E	GALLATIN
	Period of Diversion:	APRIL 1 TO OCTOBER 15				
	Diversion Means:	PUMP				
2		SWNESW	24	2N	4E	GALLATIN
	Period of Diversion:	APRIL 1 TO OCTOBER 15				
	Diversion Means:	HEADGATE				
3		SWNWSW	24	2N	4E	GALLATIN
	Period of Diversion:	APRIL 1 TO OCTOBER 15				
	Diversion Means:	PUMP				

4

SWNWSW 24 2N 4E GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: HEADGATE

POINTS OF DIVERSION NO. 1 AND NO. 3 ARE MOVEABLE ALL ALONG SOURCE WITHIN
LEGAL LAND DESCRIPTION.

Period of Use: APRIL 1 TO OCTOBER 15

***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	7.40		E2E2SE	23	2N	4E	GALLATIN
2	4.40			W2NWSW	24	2N	4E GALLATIN
Total:	11.80						

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.

138713-00 138722-00

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

Water Right Number: **41H 138720-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
FRANK W MORGAN
1300 MOUNT ELLIS LN
BOZEMAN, MT 59715 9249

HENDERSON PLACE LLC
1300 MOUNT ELLIS LN
BOZEMAN, MT 59715 9249

TO LLC
27600 ROCKY MOUNTAIN RD
BELGRADE, MT 59714

Priority Date: JUNE 30, 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: REYNOLDS 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		SWNWSW	24	2N	4E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DITCH

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			S2	24	2N	4E	GALLATIN
2			SE	23	2N	4E	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.

138720-00 138721-00 214167-00

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

Water Right Number: **41H 138721-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
FRANK W MORGAN
1300 MOUNT ELLIS LN
BOZEMAN, MT 59715 9249

HENDERSON PLACE LLC
1300 MOUNT ELLIS LN
BOZEMAN, MT 59715 9249

TO LLC
27600 ROCKY MOUNTAIN RD
BELGRADE, MT 59714

Priority Date: JUNE 30, 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: REYNOLDS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2	24	2N	4E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		SE	23	2N	4E	GALLATIN
---	--	----	----	----	----	----------

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

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			S2	24	2N	4E	GALLATIN
2			SE	23	2N	4E	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.

138720-00 138721-00 214167-00

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

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

Water Right Number: **41H 138722-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
FRANK W MORGAN
1300 MOUNT ELLIS LN
BOZEMAN, MT 59715 9249

HENDERSON PLACE LLC
1300 MOUNT ELLIS LN
BOZEMAN, MT 59715 9249

TO LLC
27600 ROCKY MOUNTAIN RD
BELGRADE, MT 59714

Priority Date: JUNE 30, 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: REYNOLDS 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		SENESW	24	2N	4E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DITCH

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			SW	24	2N	4E	GALLATIN
2			E2E2	23	2N	4E	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.

138713-00 138722-00

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

Water Right Number: **41H 214167-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
FRANK W MORGAN
1300 MOUNT ELLIS LN
BOZEMAN, MT 59715 9249

HENDERSON PLACE LLC
1300 MOUNT ELLIS LN
BOZEMAN, MT 59715 9249

TO LLC
27600 ROCKY MOUNTAIN RD
BELGRADE, MT 59714

***Priority Date:** APRIL 1, 1969

***Type of Historical Right:** DECREED

***Purpose (Use):** IRRIGATION

Irrigation Type: SPRINKLER

***Flow Rate:** 336.60 GPM

THE WATER RIGHT NUMBERS 41H 138713-00 AND 41H 214167-00 SHARE A FLOW RATE OF 336.6 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:** 46.50

***Source Name:** REYNOLDS 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		S2N2SW	24	2N	4E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: PUMP

2		SENESE	24	2N	4E	GALLATIN
---	--	--------	----	----	----	----------

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: PUMP

POINTS OF DIVERSION ARE MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION.

***Period of Use:** APRIL 1 TO OCTOBER 15

***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	46.50	SW	24	2N	4E	GALLATIN
Total:	46.50					

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.

138720-00 138721-00 214167-00