

41H-0168-R-2021

September 14, 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: James Brown; Lynda Brown; William H. Larue;
Judy A. Lewis; Alan R. McCollim; Jennifer L.
McCollim; Crystal M. Skinner; Timothy S.
Skinner; Gabriel M. St. Pierre

CASE 41H-0168-R-2021
41H 8498-00

OBJECTOR: Judy A. Lewis

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 8498-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with an ownership issue remark.

Judy Lewis filed an ownership objection to the water right claim.

The Water Court consolidated water right claim 41H 8498-00 into Water Court case 41H-0168-R-2021 and held a May 19, 2021 status conference attended by co-owners Judy Lowis, John Brown, Alan McCollim, and Crystal Skinner. The Water Court set and extended filing deadlines for the co-owners to file additional ownership information with the court. The co-owners did not file additional ownership information with the court. However, ownership updates appear to have been processed by DNRC during the course of the case's proceedings.

The Water Court presently resolves the issue in this case.

ISSUES

1. *Whether the Water Court modifies ownership of water right claim 41H 8498-00.*

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.

DISCUSSION

1. *Whether the Water Court modifies ownership of water right claim 41H 8498-00.*

Water right claim 41H 8498-00 is a sprinkler/flood-irrigation use claim for surface water from Hyalite Creek in Gallatin County, Montana. An issue remark appearing on the water right claim's preliminary decree abstract states: “PLACE OF USE HAS BEEN SUBDIVIDED, THE ONLY ACCURATE OWNER IS THE MCCOLLIM PARCEL.” However, DNRC's database indicated at the start of the case's proceedings that James and Lynda Brown, William H. Larue, Judy A. Lowis, Alan and Jennifer McCollim, Crystal and Timothy Skinner, and Gabriel M. St. Pierre currently own water right claim 41H 8498-00.

Judy Lowis filed an ownership objection to water right claim 41H 8498-00 asserting Lowis co-owns the water right claim. The DNRC's database corroborates Lowis' co-ownership of the water right claim.

At the status conference, Lowis indicated her father William LaRue was deceased and should be removed from the decree abstract and that Rob Lowis and Bruce LaRue

potentially co-own the water right. To update ownership, the court indicated it would need to review documentation, including deeds, indicating Rob Lowis and Bruce La Rue co-owned the water right claim as a matter of law. The court set a filing deadline for co-owners to file current ownership documentation. No additional information was filed with the Water Court.

The court's previous order stated: "The court wishes to clarify that DNRC's database already indicates Judy Lowis is a co-owner of water right claim 41H 8498-00. If the purpose of Lowis' objection was to ensure her name is reflected on the decree abstract for the water right claim 41H 8498-00, this was previously taken care of by DNRC."

The Water Court believes Lowis' objection was previously resolved, as Lowis currently appears as a co-owner of water right claim 41H 8498-00. The court's review of ownership on Montana cadastral is consistent with ownership of the place of use recorded in DNRC's water rights database. The issue remark appears to be outdated and is therefore removed.

Furthermore, DNRC updated ownership of the water right claim during the course of the case's proceedings by removing William LaRue and adding the LaRue Living Trust—Trustees Bruce and Donna La Rue—and Robert Lowis to the claim's decree abstract. In any instance, the Water Court does not modify the water right claim's ownership element pursuant to this Master's Report.

Finally, the water right claim received an issue remark stating: "THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON HYALITE CREEK WITH A PRIORITY DATE PREDATING CASE NO. 1772, GALLATIN COUNTY." No information before the court indicates the reason Case No. 1772, Gallatin County, does not include claim 41H 8498-00. 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. Water right claim 41H 1772-00 did not receive related objections, no additional proceedings are required, and the issue remark can be removed.

RECOMMENDATIONS

This Water Master recommends the Water Court to remove the resolved issue remarks. The court attaches a post-decree abstract to this Master's Report to reflect the changes made.

Kirsa Shelkey
Water Master
she/her/hers

Service via USPS Mail:

James Brown
Lynda Brown
2261 E Cameron Bridge Rd
Bozeman, MT 59718

William H. Larue
% Robert Larue
1509 Cannon
Helena, MT 69601

Judy A. Lowis
2057 Cameron Bridge Rd E
Bozeman, MT 59718

Alan R. McCollim
Jennifer L. McCollim
1849 E Cameron Bridge Rd
Bozeman, MT 59718

Crystal M. Skinner
Timothy S. Skinner
2135 E Cameron Bridge Rd
Bozeman, MT 59718

Gabriel M. St. Pierre
1627 W Main St
Bozeman, MT 59715

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

Water Right Number: **41H 8498-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

JUDY A LOWIS
2057 CAMERON BRIDGE RD E
BOZEMAN, MT 59718

ROBERT W LOWIS
2055 E CAMERON BRIDGE RD
BOZEMAN, MT 59718

ALAN R MCCOLLIM
1849 E CAMERON BRIDGE RD
BOZEMAN, MT 59718 4680

JENNIFER L MCCOLLIM
1849 E CAMERON BRIDGE RD
BOZEMAN, MT 59718 4680

CRYSTAL M SKINNER
2135 E CAMERON BRIDGE RD
BOZEMAN, MT 59718 8834

TIMOTHY S SKINNER
2135 E CAMERON BRIDGE RD
BOZEMAN, MT 59718 8834

GABRIEL M ST PIERRE
1627 W MAIN ST
BOZEMAN, MT 59715

BROWN LIVING TRUST
JAMES R & LINDA L BROWN TTEES
2261 E CAMERON BRIDGE RD
BOZEMAN, MT 59718

LARUE LIVING TRUST
BRUCE E & DONNA V LARUE TRUSTEES
2275 E CAMERON BRIDGE RD
BOZEMAN, MT 59718 7934

Priority Date: APRIL 30, 1888

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 2.50 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:** 210.00

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		NWSESW	17	1S	5E	GALLATIN

Period of Diversion: APRIL 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

2		SESWSW	17	1S	5E	GALLATIN
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Period of Diversion: APRIL 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO SEPTEMBER 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	76.50		N2SW	17	1S	5E	GALLATIN
2	40.00		SWSW	17	1S	5E	GALLATIN
3	13.50		SESW	17	1S	5E	GALLATIN
4	12.00		SWNW	17	1S	5E	GALLATIN
5	68.00		E2SE	18	1S	5E	GALLATIN

Total: 210.00