

41H-0170-R-2021

September 3, 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: Jason K. Shrauger; Pamela L. Shrauger; Jon Olson; Tiffany Olson; Douglas N. Betts; Lillian E. Betts; Goldenstein Ranch LLC; Sheila M. Ruffato Living Trust; Gordon Vance; Shelley Vance	CASE 41H-0170-R-2021 41H 115501-00 41H 115536-00 41H 115585-00 41H 138770-00
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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 claims 41H 115501-00 (Jason and Pamela Shrauger), 41H 115536-00 (Jon and Tiffany Olsen), 41H 115585-00 (Lillian and Douglas Betts), and 41H 138770-00 (Sheila

M. Ruffatto Living Trust, Shelley and Gordon Vance, Goldenstein Ranch LLC) appeared in the Preliminary Decree for the Gallatin River (Basin 41H). Each claim received the same issue remark resulting from the Montana Department of Natural Resources and Conservation's (DNRC) preparation of the preliminary decree. The issue remark states:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 100 MINER'S INCHES DECREED IN CASE NO. 1333, GALLATIN COUNTY. 41H 115501-00, 41H 115536-00, 41H 115585-00, and 41H 138770-00.

To discuss the decree-exceeded issue remarks the Water Court consolidated the water rights claims into Water Court case 41H-0170-R-2021 and held a July 9, 2021 status conference attended by Jason and Pamela Shrauger, Jon Olsen, Karen Betts, daughter and power of attorney (POA) for Lillian and Douglas Betts, and Ben Sudduth, counsel for Sheila M. Ruffatto Living Trust. The parties directed the court's attention to an October 9, 1992 Master's Report indicating the decree-exceeded issue had previously been resolved by the Water Court.

To ensure the court correctly understood the parties, the court set a filing deadline for the parties to file additional information, as well as a concurrent filing deadline for the co-owners of water right claim 41H 138770-00 to file information resolving additional issue remarks regarding that claim. Specifically, the court asked the co-owners to review the 1992 Master's Report and indicate whether the issues were resolved and whether the claim's elements appeared correct in the preliminary decree.

On July 26, 2021, the owners of water right claim 41H 115501-00 filed information stating they agreed there was no ongoing decree-exceeded issue.

The Water Court presently resolves the issue in this case.

ISSUES

1. *Whether the decree-exceeded issue remarks appearing on the water rights claims are resolved and can be removed.*
2. *Whether the 1992 Master's Report resolves the additional issue remarks appearing on water right 41H 138770-00.*

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 the decree-exceeded issue remarks appearing on the water rights claims are resolved and can be removed.

The issue remark received by the water rights claims consolidated into this case states:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 100 MINER’S INCHES DECREED IN CASE NO. 1333, GALLATIN COUNTY. 41H 115501-00, 41H 115536-00, 41H 115585-00, and 41H 138770-00.

At the status conference, the parties indicated this issue was previously resolved by a 1992 Master’s Report. Indeed, the 1992 Master’s Report states in its findings of fact:

On February 5, 1990, Gerald R. Goldenstein and Alvin Goldenstein filed an Affidavit with the Water Court stating that the basis of water right claim 41H-W-138770-00 is not the previously decreed 1872 Marion Flaharty water right but rather is the water right previously decreed to James W. Mardis for

100.00 miner's inches (2.5 cfs) with an 1872 priority date in Sanford Ruffner et al. v. Amos Williams et al., Case No. 13333 Gallatin County.

The Master's Report further delineated the 100 miner's inches originally appropriated by the 1872 Marion Flaharty water right between water rights claims 41H 46104-00, 41H 115501-00, 41H 115536-00, and 41H 115585-00 consistent with a stipulation and withdrawals of interest filed by the parties. The Master's Report concluded: "The March 19, 1990 Stipulation and Withdrawal of water rights claims [. . .] resolves the decree exceeded situation involving the claims in this case."

Despite the 1992 Master's Report in the claims' files, DNRC erred in adding the decree-exceeded issue remark in 2017 to the preliminary decree abstracts for the water rights consolidated into this case. The remark incorrectly flagged the existence of an unresolved decree-exceeded issue to the court. Accordingly, the court removes DNRC's issue remarks because no decree-exceeded issue presently exists.

The water rights claims additionally received issue remarks providing notice certain elements of the claims were modified or corrected during reexamination of the basin. The issue remarks state if no objections are filed to the claims, the remarks will be removed. The water right claims did not receive objections, no proceedings are required, and the issue remarks shall be removed.

2. *Whether the 1992 Master's Report resolves the additional issue remarks appearing on water right 41H 138770-00.*

Water right claim 41H 138770-00 received additional issue remarks stating:

THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF DIVERSION APPEARS TO BE A HEADGATE.

THIS CLAIM WAS INCLUDED IN A WATER COURT CASE INITIATED PRIOR TO THE ISSUANCE OF THE BASIN 41H PRELIMINARY DECREE. THE CASE WAS NOT CLOSED PRIOR TO THE ISSUANCE OF THE DECREE. THEREFORE, THE ABSTRACT MAY NOT REFLECT THE CURRENT ELEMENTS OF THIS CLAIM AS ADJUDICATED BY THE COURT.

THE REQUEST TO SPLIT, SUBMITTED ON 8/29/2013, WILL BE PROCESSED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE

POINTS OF DIVERSION APPEAR TO BE INCORRECT. POINT OF DIVERSION NO. 1 APPEARS TO BE LOCATED IN THE NWSESE SEC

07, TWP 03S, RGE 06E. POINT OF DIVERSION NO. 2 APPEARS TO BE LOCATED IN THE NESWSE SEC 06, TWP 03S, RGE 06E.

The claim's preliminary decree abstract indicates water right claim 41H 138770-00 is a decreed sprinkler/flood irrigation claim for surface water diverted from Sourdough Creek. Consistent with the 1992 Master's Report and a May 20, 1992 Affidavit filed by then owners Alvin and Gerald Goldenstein, two points of diversion are associated with the water right claim: (1) a "PUMP/HEADGATE W/DITCH OR PIPELINE" on Mystic Lake Ditch in the NWNSE of Section 7, Township 3S, Range 6E, Gallatin County; and (2) a "PUMP/HEADGATE W/DITCH OR PIPELINE" on 66 Ditch in the SESWSE of Section 6, Township 3S, Range 6E, Gallatin County.

In its previous order, the court asked the claim's co-owners, Sheila M. Ruffatto Living Trust, Shelley and Gordon Vance, and Goldenstein Ranch LLC, to review the claim's preliminary decree abstract and 1992 Master's Report and indicate whether the elements appeared correct. The court did not receive information from the co-owners.

The Water Court does not presently disturb the findings and conclusions in the 1992 Master's Report. The means of diversion and points of diversion for water right claim 41H 138770-00 will remain as they appeared in the preliminary decree, consistent with the 1992 Master's Report.

Finally, no split request is before the court. The court assumes this issue remark was added in error. However, should the co-owners wish to further split elements of the water right, they can do so by contacting the Bozeman DNRC Office.

RECOMMENDATIONS

This Water Master recommends the Water Court to remove the resolved issue remarks from the water rights claims. The court attaches post-decree abstracts to this Master's Report to reflect the changes made.

Kirsa Shelkey
Water Master
she/her/hers

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

Water Right Number: 41H 115501-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: JASON K SHRAUGER
4855 S 3RD AVE
BOZEMAN, MT 59715 0662

PAMELA L SHRAUGER
4855 S 3RD AVE
BOZEMAN, MT 59715 0662

Priority Date: DECEMBER 31, 1872

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 426.40 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:** 40.26

Source Name: SOURDOUGH 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		NWSESE	7	3S	6E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: MYSTIC LAKE DITCH

Period of Use: MAY 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	10.07		N2S2NENW	36	2S	5E	GALLATIN
2	5.04		S2SWNENW	36	2S	5E	GALLATIN
3	10.06		N2S2NWNW	36	2S	5E	GALLATIN
4	10.06		S2S2NWNW	36	2S	5E	GALLATIN
5	5.03		N2NWSSENW	36	2S	5E	GALLATIN

Total: 40.26

FOR ADMINISTATIVE PURPOSES, AND DUE TO DATABASE LIMITATIONS AND THE
LACK OF FURTHER DETAIL IN THE RECORD, THE 10.07 ACRES IRRIGATED IN THE
S2SWNENW AND THE N2NWSSENW HAVE BEEN DIVIDED AS EVENLY AS

POSSIBLE.

Remarks:

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

14727-00 115501-00

THE MAXIMUM ACRES AND PLACE OF USE WERE AMENDED BY THE WATER COURT PURSUANT TO SECTION 85-2-233(6), MCA.

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

Water Right Number: 41H 115536-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JON OLSEN
6780 PATTERSON RD
BOZEMAN, MT 59715

TIFFANY OLSEN
6780 PATTERSON RD
BOZEMAN, MT 59715

Priority Date: DECEMBER 31, 1872

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 89.80 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: 20.13

Source Name: SOURDOUGH 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		NWSESE	7	3S	6E	GALLATIN

Period of Diversion: MAY 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: MYSTIC LAKE DITCH

Period of Use: MAY 15 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	20.13		N2N2NW	36	2S	5E	GALLATIN

Total: 20.13

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

Water Right Number: **41H 115585-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DOUGLAS N BETTS
 PO BOX 3073
 BOZEMAN, MT 59772

 LILLIAN E BETTS
 PO BOX 3073
 BOZEMAN, MT 59772

Priority Date: DECEMBER 31, 1872

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 44.90 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: 10.07

Source Name: SOURDOUGH 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		NWSESE	7	3S	6E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: MYSTIC LAKE DITCH

Period of Use: MAY 1 TO OCTOBER 1

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	10.07		S2SESW	36	2S	5E	GALLATIN

Total: 10.07

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

Water Right Number: **41H 138770-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GORDON VANCE
 3008 MACNAB ST
 BOZEMAN, MT 59715

SHELLEY VANCE
3008 MACNAB ST
BOZEMAN, MT 59715

GOLDENSTEIN RANCH LLC
%TIMOTHY J GOLDENSTEIN
7190 GOLDENSTEIN LN
BOZEMAN, MT 59715

RUFFATTO, SHELIA M LIVING TRUST
%RUFFATTO, SHELIA M TRUSTEE
7810 GOLDENSTEIN LN
BOZEMAN, MT 59715

Priority Date: DECEMBER 31, 1872

Type of Historical Right: DECREED

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: 145.00

Source Name: SOURDOUGH 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		NWNESE	7	3S	6E	GALLATIN

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

Ditch Name: MYSTIC LAKE DITCH

2		SESWSE	6	3S	6E	GALLATIN
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Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

Ditch Name: 66 DITCH

Period of Use: APRIL 15 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	110.00		SW	30	2S	6E	GALLATIN
2	35.00		E2SE	25	2S	5E	GALLATIN
Total:	145.00						

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.

138764-00	138765-00	138767-00	138768-00	138769-00	138770-00
148427-00	211612-00				