

Montana Water Court
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41H-0322-R-2021

September 16, 2021

Montana Water Court

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

CLAIMANTS: Gallatin County Solid Waste District; 7 Bar
LLC; DJR Holdings LLC

CASE: 41H-0322-R-2021
41H 132201-00
41H 132202-00
41H 132212-00
41H 132213-00
41H 132193-00

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

FINDINGS OF FACT

1. Claims 1H 132201-00, 41H 132202-00, 41H 132212-00, 41H 132213-00, 41H 132193-00 were decreed with the following DNRC issue remark:

THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 41H 132212-00, 41H 132213-00, 41H 132201-00, 41H 132202-00 41H 132193-00.

2. No objections were filed during the Preliminary Decree.

3. Based on the record, it appears all the claims in this Case are based on the April 18, 1938 Ivan H. Beall filed right for 75.00 miner's inches for various uses from an Unnamed Tributary of the Gallatin River.

4. Except for claim 41H 132202-00, the claims in this Case were decreed with multiple use information remarks.

5. On April 20, 2021, the court issued an Order Setting Filing Deadline explaining that based on this Master's analysis, claim 41H 132202-00 should be added to the multiple use relationship with the other claims; this would resolve the over-filed notice of appropriation issue remark appearing on the claims. A deadline was set for the Claimants to agree or disagree that claim 41H 132202-00 be added to the multiple use information remark appearing on claims 41H 132201-00, 41H 132212-00, 41H 132213-00, and 41H 132193-00.

6. On June 22, 2021, Abigail R. Brown filed a Notice of Appearance for Gallatin County Solid Waste District along with Comment in Response to the Order. The Comment indicated all parties in the Case agree claim 41H 132202-00 should be added to the multiple use information remark, resolving the issue remark.

CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233,-247,-248, MCA. The issue remarks have been addressed.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R.; *Nelson v. Brooks*, 2014 MT 120, 375 Mont.86, 95, 329 P.3d 558, 564.

RECOMMENDATIONS

1. Claim 41H 132202-00 should be added to the multiple use information remark appearing on the other claims in this Case; the multiple use information remark should be added to claim 41H 132202-00.

2. The issue remark should be removed from the claims.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended changes have been made in the DNRC’s water rights database.

Anika M. Stern
Senior Water Master

Service via USPS Mail:

Gallatin County Solid Waste District
PO Box 461
Three Forks, MT 59752
406.582.2492
406.209.3565
Chris.Gray@Gallatin.MT.Gov
(Last Order)

7 Bar LLC
PO Box 3445
Bozeman, MT 59772-3445

DJR Holdings LLC
203 N. Ewing St
Helena, MT 59601-4202

Service Via Electronic Mail:

Abigail R. Brown
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Service List updated: 7.1.21

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

Water Right Number: 41H 132193-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GALLATIN COUNTY SOLID WASTE DISTRICT
PO BOX 461
THREE FORKS, MT 59752

Priority Date: APRIL 18, 1938

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 26.93 GPM

Volume: 1.50 AC-FT

Households: 1

Maximum Acres: 0.25

Source Name: SPRING, UNNAMED TRIBUTARY OF GALLATIN RIVER

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		NWSESW	31	2N	3E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

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	0.25		SESW	31	2N	3E	GALLATIN

Total: 0.25

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.

132193-00 132194-00 132201-00 132202-00 132212-00 132213-00

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

Water Right Number: 41H 132201-00 STATEMENT OF CLAIM
Version: 5 -- POST DECREE
Status: SEVERED

Owners: 7 BAR LLC
PO BOX 3445
BOZEMAN, MT 59772 3445

DJR HOLDINGS LLC
203 N EWING ST
HELENA, MT 59601 4202

Priority Date: APRIL 18, 1938

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM.

Volume: THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING 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: SPRING, UNNAMED TRIBUTARY OF GALLATIN RIVER

Source Type: SURFACE WATER
ALSO KNOWN AS LOGAN SPRING #1

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		NWSEW	31	2N	3E	GALLATIN

Period of Diversion: APRIL 15 TO OCTOBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: APRIL 15 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			S2	31	2N	3E	GALLATIN
2				1	1N	2E	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.

132193-00 132194-00 132201-00 132202-00 132212-00 132213-00

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

Water Right Number: 41H 132202-00 STATEMENT OF CLAIM
Version: 5 -- POST DECREE
Status: SEVERED

Owners: 7 BAR LLC
PO BOX 3445
BOZEMAN, MT 59772 3445

DJR HOLDINGS LLC
203 N EWING ST
HELENA, MT 59601 4202

Priority Date: APRIL 18, 1938

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM.

Volume: THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING 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: UNNAMED TRIBUTARY OF GALLATIN RIVER

Source Type: SURFACE WATER
ALSO KNOWN AS LOGAN SPRING #2

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		NWSEW	31	2N	3E	GALLATIN

Period of Diversion: APRIL 15 TO OCTOBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: APRIL 15 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			S2	31	2N	3E	GALLATIN
2				1	1N	2E	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.

132193-00 132194-00 132201-00 132202-00 132212-00 132213-00

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

Water Right Number: 41H 132212-00 STATEMENT OF CLAIM
Version: 6 -- POST DECREE
Status: SEVERED

Owners: 7 BAR LLC
PO BOX 3445
BOZEMAN, MT 59772 3445

DJR HOLDINGS LLC
203 N EWING ST
HELENA, MT 59601 4202

Priority Date: APRIL 18, 1938

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 1.88 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 60.00

Source Name: SPRING, UNNAMED TRIBUTARY OF GALLATIN RIVER

Source Type: SURFACE WATER

ALSO KNOWN AS LOGAN SPRING #1

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		NWSEW	31	2N	3E	GALLATIN

Period of Diversion: APRIL 15 TO OCTOBER 1

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

Period of Use: APRIL 15 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	60.00		W2NE	1	1N	2E	GALLATIN

Total: 60.00

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.

132193-00 132194-00 132201-00 132202-00 132212-00 132213-00

FILE REFLECTS AUTHORIZATION TO CHANGE THE POINT OF DIVERSION AND PLACE OF USE OF A PORTION OF THIS WATER RIGHT, COMPLETED 3-19-84.

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

Water Right Number: 41H 132213-00 STATEMENT OF CLAIM
Version: 6 -- POST DECREE
Status: SEVERED

Owners: 7 BAR LLC
PO BOX 3445
BOZEMAN, MT 59772 3445

DJR HOLDINGS LLC
203 N EWING ST
HELENA, MT 59601 4202

Priority Date: APRIL 18, 1938

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 1.88 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 60.00

Source Name: SPRING, UNNAMED TRIBUTARY OF GALLATIN RIVER

Source Type: GROUNDWATER

ALSO KNOWN AS LOGAN SPRING #2

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		NWSEW	31	2N	3E	GALLATIN

Period of Diversion: APRIL 15 TO OCTOBER 1

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

Period of Use: APRIL 15 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	60.00		E2NE	1	1N	2E	GALLATIN

Total: 60.00

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.

132193-00 132194-00 132201-00 132202-00 132212-00 132213-00

FILE REFLECTS AUTHORIZATION TO CHANGE THE POINT OF DIVERSION AND PLACE OF USE OF A PORTION OF THIS WATER RIGHT, COMPLETED 3-19-84.