

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

41H-0324-R-2021

September 10, 2021

Montana Water Court

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

* * * * *

CLAIMANT: Bradley J Bean

CASE 41H-0324-R-2021
41H 113256-00**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

Claim 41H 113256-00 is a sprinkler/flood irrigation claim that is owned by Bradley J. Bean. The claim appeared in the Preliminary Decree with Department of

Natural Resource and Conservation issue remarks. The issue remarks provided notice to Claimant and water users of the late Objection from the Temporary Preliminary Decree, an amendment submitted to the claim, and clerical corrections to the claim. Claimant Bean was notified that the notice-only issue remarks on the claim will be removed.

FINDINGS OF FACT

1. On July 21, 2021, Claimant Bean filed a Form 642- DNRC Ownership Update Exempt (Reserved)/Severed Water Rights (hereinafter “Form 642”) for claim 41H 113256-00 as well as several other claim in Water Court Case 41H-5053-S-2021.

2. Claimant signed the Form 642 and provided the Court with a letter describing his desire to sever the claim from its place of use in its entirety.

3. The forms and attached documents identified with detail the acres irrigated and legal land description to be removed from the place of use identified in the claim abstract of claim 41H 113256-00. The entirety of the place of use for Claim 41H 113256-00 is to be severed according to the Form 642 and maps.

4. The chain of title for the land appurtenant to claim 41H 113256-00 indicates that Claimant reserved all water rights in the transaction. Claimant continues to own the land in which the water is used.

5. The following remark should be added to claim 41H 113256-00:

THIS WATER RIGHT HAS BEEN SEVERED FROM THE PLACE OF USE.

6. Claim 41H 113256-00 is now 100% severed from its underlying historical place of use. In order to use these claims in a different place of use going forward, change authorization versions must be created by DNRC.

7. The remaining elements of the claim abstract should remain as they appear.

8. No documents are on the record indicating that any other amendments to the claim were filed, therefore all issue remarks are resolved.

CONCLUSIONS OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, 85-2-102(12), MCA.

2. A properly filed Statement of Claim for an existing water right is *prima facie* proof of its content. Section 85-2-227, MCA.

3. *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.

4. 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.

5. 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 examine water right claims. Section 85-2-231(2), MCA.

6. The issue remarks to this claim are for notification purposes only and can be removed from claim 41H 113256-00.

7. The right to use water shall pass with the conveyance of the land or transfer by operation of law, unless specifically reserved therefrom. Section 85-2-403, MCA.

8. The severance of claim 41H 113256-00 occurred through property transfer deed which expressly reserved the water right appurtenant to the real property.

9. The evidence entered into the record describing the property transfers in which the water right was reserved is sufficient to sever the claim as stated in the Findings of Fact.

RECOMMENDATIONS

Therefore, pursuant to section 85-2-233(6), MCA, it is recommended that the Motion to Sever statement of claim 41H 113256-00 be GRANTED.

New Post Decree Abstract of Water Right Claim 41H 113256-00 should be created to reflect severed state of the claim. The Post Decree Abstract of Water Right Claims is served with this Report to confirm the recommended changes have been made in the state's centralized water right record system.

Julia J. Nordlund
Senior Water Master

Service via USPS Mail:

Bradley J Bean
1627 W Main St, #368
Bozeman, MT 59715

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

Water Right Number: **41H 113256-00** STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: ACTIVE

Owners: BRADLEY J BEAN
1627 W MAIN ST, #368
BOZEMAN, MT 59715

Priority Date: JUNE 10, 1902

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 305.18 GPM

***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:** 343.50

Source Name: WEST GALLATIN RIVER

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SESENE	16	1S	4E	GALLATIN

Period of Diversion: MARCH 1 TO DECEMBER 1

Diversion Means: HEADGATE

Ditch Name: D. N. HOFFMAN DITCH

THE HEADGATE FOR THE D.N. HOFFMAN DITCH IS LOCATED IN THE NESESE OF SECTION 9, T1S, R4E, GALLATIN COUNTY.

Period of Use: MARCH 1 TO DECEMBER 1

***Place of Use:**

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	130.50		SW	28	1N	4E	GALLATIN
2	152.00		NW	33	1N	4E	GALLATIN
3	33.00		W2NE	33	1N	4E	GALLATIN
4	28.00		W2SE	28	1N	4E	GALLATIN
Total:	343.50						

THIS WATER RIGHT HAS BEEN SEVERED FROM THE PLACE OF USE.

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.

113256-00

113257-00

113258-00

113259-00

113260-00

113261-00

120397-00