

Montana Water Court
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ELECTRONICALLY FILED

41H-0416-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

CLAIMANTS: Bozeman Lakes LLC; Delaney & Co Inc

CASE 41H-0416-R-2021
41H 22550-00
41H 22552-00
41H 22553-00

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 22550-00 is a flood irrigation claim owned by Delaney & Co Inc. and Bozeman Lakes LLC. Claims 41H 22552-00 and 41H 22553-00 are flood irrigation claims owned by Bozeman Lakes LLC. The claims appeared in the Preliminary Decree for Basin 41H with Department of Natural Resources and Conservation (DNRC) issue remarks. All of the claims received an issue remark questioning the location of the point of diversion. Claims 41H 22552-00 and 41H 22553-00 received issue remarks questioning the ownership of the claims due to the highly subdivided place of use according to the Gallatin County Clerk and Recorder records. The claims were consolidated into Water Court Case 41H-416-R-2021.

FINDINGS OF FACT:

1. On June 22, 2021, the Court issued an Order Setting Filing Deadline for Claimants to file evidence to show where the claims' points of diversion are by August 16, 2021.
2. The Order stated that if nothing was filed by the deadline, the claims may be terminated due to the highly subdivided nature of the claims.
3. The Court did not receive any evidence from Claimants as of the date of this Report and the filing deadline has passed.
4. The remaining issue remarks to this claim are irrelevant since the claim has been abandoned and it will be terminated.

CONCLUSIONS OF LAW

1. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. When resolving issue remarks, the 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.
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. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing, or fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R.

4. Pursuant to Section 85-2-248(9), MCA, and Rule 22, W.R.Adj.R., when a claimant fails to comply with an Order issued by the Water Court, including an Order issued by a Water Master appointed by the Court, the Court, upon motion, or its own initiative, can among other actions: 1) amend the elements of the claim to conform with the information in the claim file or information obtained by the Court, or 2) terminate the claim.

5. Claimants failed to provide any evidence to the Court to show the location of the point of diversion or to show that the claim has not been abandoned. The DNRC's issue remark as to the highly subdivided nature of the claim combined with the lack of participation from Claimants are enough to justify a dismissal of claims 41H 22550-00, 41H 22552-00, and 41H 22553-00.

RECOMMENDATIONS

The changes recommended above should be adopted. Post Decree Abstracts of Water Right Claims is served with this Report to confirm that claims 41H 22550-00, 41H 22552-00, and 41H 22553-00 have been dismissed.

Julia J. Nordlund
Senior Water Master

Service via USPS Mail:

Bozeman Lakes LLC
% Don Meyers
8310 Gooch Hill Rd
Bozeman, MT 59718-6920

Delaney & Co Inc
101 E Main St
Bozeman, MT 59715

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

Water Right Number: 41H 22550-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners: BOZEMAN LAKES LLC
% DON MEYERS
8310 GOOCH HILL RD
BOZEMAN, MT 59718 6920

DELANEY & CO INC
101 E MAIN ST
BOZEMAN, MT 59715

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF BAXTER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41H 22552-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: **DISMISSED**

Owners: BOZEMAN LAKES LLC
% DON MEYERS
8310 GOOCH HILL RD
BOZEMAN, MT 59718 6920

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF BAXTER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41H 22553-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: BOZEMAN LAKES LLC
% DON MEYERS
8310 GOOCH HILL RD
BOZEMAN, MT 59718 6920

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF BAXTER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.