

Montana Water Court
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41H-0560-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

CLAIMANTS: Rothschiller Family Farm, LLC; Rocky Creek
Holdings, LLC; Gallatin Valley Botanical Inc.;
Marvin Davis

CASE 41H-0560-R-2021
41H 136807-00
41H 136809-00

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 41H 136807-00 and 41H 136809-00 were decreed with a DNRC issue remark:

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

2. No objections were filed.

PRINCIPLES OF LAW

1. 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.

2. The Water Court must address all issue remarks that appear on a claim. Section 85-2-248, MCA.

CONCLUSION OF LAW

1. The DNRC did not provide any information to support the point of diversion issue remark it placed on claims 41H 136807-00 and 41H 136809-00. The issue remark should be removed.

RECOMMENDATION

1. The issue remark should be removed from the claims in this Case with no changes to the elements of the claims.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm the recommended changes have been made in the state's centralized record system.

Anika M. Stern
Senior Water Master

Service Via USPS Mail:

Rothschiller Family Farm, LLC
250 Chester Ln
Bozeman, MT 59715

Rocky Creek Holdings, LLC
250 Chester Ln
Bozeman, MT 59715

Gallatin Valley Botanical Inc.
250 Chester Ln
Bozeman, MT 59715

Marvin Davis
180 Chester Ln
Bozeman, MT 59715

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

Water Right Number: 41H 136807-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MARVIN DAVIS
180 CHESTER LN
BOZEMAN, MT 59715

GALLATIN VALLEY BOTANICAL INC
250 CHESTER LN
BOZEMAN, MT 59715

ROCKY CREEK HOLDINGS LLC
250 CHESTER LN
BOZEMAN, MT 59715

ROTHSCHILLER FAMILY FARM LLC
250 CHESTER LN
BOZEMAN, MT 59715

Priority Date: DECEMBER 1, 1904

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING 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: ROCKY 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		SE	14	2S	6E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: MULTIPLE

2		NW	23	2S	6E	GALLATIN
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: MULTIPLE

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>
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1

SENWSE 14 2S 6E 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.

136807-00

136809-00

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

Water Right Number: 41H 136809-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MARVIN DAVIS
180 CHESTER LN
BOZEMAN, MT 59715

GALLATIN VALLEY BOTANICAL INC
250 CHESTER LN
BOZEMAN, MT 59715

ROCKY CREEK HOLDINGS LLC
250 CHESTER LN
BOZEMAN, MT 59715

ROTHSCHILLER FAMILY FARM LLC
250 CHESTER LN
BOZEMAN, MT 59715

Priority Date: DECEMBER 1, 1904

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 255.82 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: 15.00

Source Name: ROCKY 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		SENWSE	14	2S	6E	GALLATIN

Period of Diversion: APRIL 1 TO NOVEMBER 15

Diversion Means: HEADGATE

2		NWNENE	23	2S	6E	GALLATIN
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Period of Diversion: APRIL 1 TO NOVEMBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO NOVEMBER 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>
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1	15.00	S2NWSE	14	2S	6E	GALLATIN
Total:	15.00					

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.

136807-00 136809-00