

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

CLAIMANT: BNSF Railway Co.

CASE 41H-0977-R-2021
41H 141237-00
41H 141239-00
41H 141241-00

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 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 rights claims 41H 141237-00, 41H 141239-00, and 41H 141241-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with issue remarks received

during the Department of Natural Resources and Conservation's (DNRC) review in preparation of the preliminary decree.

The Water Court consolidated the water rights claims into Water Court case 41H-0977-R-2021 and set filing deadlines for BNSF, the claims' owner per DNRC's water rights database, to file information resolving the issue remarks. On August 24, 2021, John Tietz, counsel for BNSF, filed a response with the Water Court.

The Water Court presently resolves the issue in this case.

ISSUES

1. Whether the Water Court dismisses water right claims 41H 141239-00 and 41H 141241-00 from the adjudication process by request.

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.

DISCUSSION

1. Whether the Water Court dismisses water right claims 41H 141239-00 and 41H 141241-00 from the adjudication process by request.

The response filed by BNSF requests the Water Court to dismiss water rights claims 41H 141239-00 and 41H 141241-00 from the adjudication process. The response states: “BNSF’s investigation into the historical use of claim[s] 41H 141239-00 and 41H 141241-00] indicate[s] that water has not been diverted pursuant to [those claims] for a very long time, and the claim[s] ha[ve] therefore been abandoned.” The court grants BNSF’s request and dismisses the water rights claims from the adjudication process.

The response additionally indicates BNSF sold the place of use associated with appurtenant water right claim 41H 141237-00 to Montana Rail Link (MRL) on October 30, 1987. BNSF attached the quitclaim deed, which does not reserve the water right claim to BNSF. Therefore, the Water Court notices MRL, through courtesy copy, that MRL potentially owns an interest in water right claim 41H 141237-00. Ownership has not yet been updated in DNRC’s water rights database. While the court has the quitclaim deed

evidencing BNSF sold the property at issue to MRL in 1987, the Water Court does not have information indicating MRL presently owns the water right claim and does not update ownership at this time. Water right claim 41H 141237-00 received a “notice only” issue remark, which is hereby removed, resolving the only issue regarding that water right claim. MRL can further update ownership by contacting the Bozeman DNRC’s office.

RECOMMENDATIONS

This Water Master recommends the Water Court to dismiss water rights claims 41H 141239-00 and 41H 141241-00, and to remove the resolved issue remarks from water right claim 41H 141237-00. The court attaches post-decree abstracts for the water rights claims to this Master’s Report to reflect the changes made.

Kirsa Shelkey
Water Master
she/her/hers

Service Via Electronic Mail:

John W. Tietz
Browning Kaleczyc Berry & Hoven PC
PO Box 1697
Helena, MT 59624-1697
(406) 443-6820
john@bkbh.com
Madelaine@bkbh.com

Courtesy Copy:
Montana Rail Link, Inc.
PO Box 16390
Missoula, MT 59808

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

Water Right Number: 41H 141237-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: BNSF RAILWAY CO
% BLAINE BILDERBACK
2650 LOU MENK DR # MOB-2
FORT WORTH, TX 76131 2830

Priority Date: JUNE 9, 1952

Type of Historical Right: FILED

Purpose (Use): INDUSTRIAL

Flow Rate: 10.00 GPM

Volume: 0.22 AC-FT

Source Name: GROUNDWATER

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		NWNESE	21	2S	3E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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			NESE	21	2S	3E	GALLATIN

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

Water Right Number: 41H 141239-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: BNSF RAILWAY CO
% BLAINE BILDERBACK
2650 LOU MENK DR # MOB-2
FORT WORTH, TX 76131 2830

Priority Date:

Type of Historical Right:

Purpose (Use): INDUSTRIAL

Flow Rate:

Volume:

Source Name: EAST GALLATIN RIVER

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 141241-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: BNSF RAILWAY CO
% BLAINE BILDERBACK
2650 LOU MENK DR # MOB-2
FORT WORTH, TX 76131 2830

Priority Date:

Type of Historical Right:

Purpose (Use): INDUSTRIAL

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF ROCKY 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.