

July 7, 2022

Montana Water Court

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

* * * * *

CLAIMANT: Susan A Talbot

CASE 41H-0056-R-2021

41H 139121-00

OBJECTOR: USA (Dept of Agriculture Forest Service)

41H 139122-00

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. Pursuant to Water Right Adjudication Rule 23, written objections to a Master's Report must be filed within **10 days** of the date the Report was filed. 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

Stock claims 41H 139121-00 and 41H 139122-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with issue remarks from pre-decree examination by the Montana Department of Natural Resources and Conservation (“DNRC”) and objections by the United States USDA Forest Service (“Forest Service”). The Forest Service objected to the claims’ place of use, maximum acres, point of diversion, and means of diversion on the basis that the claims include federal lands in the National Forest System. Claim 41H 139121-00 also received an issue remark stating that the legal land description of the third point of diversion could not be refined or confirmed by information in the claim file. To address the issue remarks and objections, the Water Court consolidated claims 41H 139121-00 and 41H 139122-00 into case 41H-0056-R-2021.

FINDINGS OF FACT

1. On October 20, 2021, the Water Court issued an Order Setting Filing Deadline for Claimant Susan A. Talbot and Objector Forest Service to file settlement documents resolving the objections to claims 41H 139121-00 and 41H 139122-00 by December 21, 2021. After a series of extension requests, the filing deadline was extended to June 9, 2022.
2. On June 9, 2022, Claimant Talbot and Objector Forest Service filed a Stipulation and maps with the Court to resolve the Forest Service’s objections to the claims.
3. The parties stipulate the following changes to claim 41H 139121-00:
 - a. Point of Diversion¹
 - i. POD 1: SWSENW, Sec. 4, Twp. 8 S, Rge. 4 E, GALLATIN

¹ The new DNRC database automatically sorts the order of the POD and POU #s based on section number, then alphabetically starting with the quarter section. The arrangement on the post-decree abstracts may be different than the Stipulation and this MR, but the information is the same.

- ii. POD 2: W2SESENW, Sec. 4, Twp. 8 S, Rge. 4 E, GALLATIN
 - 1. Period of Diversion: JANUARY 1 TO DECEMBER 31
 - 2. Diversion Means: LIVESTOCK DIRECT FROM SOURCE
- iii. POD 3: SESWNW, Sec. 4, Twp. 8 S, Rge. 4 E, GALLATIN
 - 1. Period of Diversion: APRIL 1 TO DECEMBER 31
 - 2. Diversion Means: HEADGATE
 - 3. Ditch Name: 320 DITCH

b. Place of Use

- i. POU 1: SWSENW, Sec. 4, Twp. 8 S, Rge. 4 E, GALLATIN
- ii. POU 2: W2SESENW, Sec. 4, Twp. 8 S, Rge. 4 E, GALLATIN
- iii. POU 3: SENWSW, Sec. 4, Twp. 8 S, Rge. 4 E, GALLATIN
- iv. POU 4: E2NENWSW, Sec. 4, Twp. 8 S, Rge. 4 E, GALLATIN
- v. POU 5: SWNENWSW, Sec. 4, Twp. 8 S, Rge. 4 E, GALLATIN

4. The parties stipulate the following changes to claim 41H 139122-00:

a. Point of Diversion

- i. POD 2: W2NESW, Sec. 4, Twp. 8 S, Rge. 4 E, GALLATIN
- ii. POD 3: W2NENESW, Sec. 4, Twp. 8 S, Rge. 4 E, GALLATIN
- iii. POD 4: W2SESENW, Sec. 4, Twp. 8 S, Rge. 4 E, GALLATIN

b. Place of Use

- i. POU 2: W2NESW, Sec. 4, Twp. 8 S, Rge. 4 E, GALLATIN
- ii. POU 3: W2NENESW, Sec. 4, Twp. 8 S, Rge. 4 E, GALLATIN
- iii. POU 4: W2SESENW, Sec. 4, Twp. 8 S, Rge. 4 E, GALLATIN

5. The parties stipulate the following information remark be added to claim 41H 139121-00:

POINT OF DIVERSION ID NO. 1 AND THE PLACE OF USE ARE ENTIRELY ON PRIVATE LAND.

6. The parties also stipulate the following information remark be added to claim 41H 139122-00:

THE POINTS OF DIVERSION AND PLACES OF USE ARE ENTIRELY ON
PRIVATE LAND.

7. The parties' Stipulation refines the claimed points of diversions and places of use so that they are located entirely on Claimant Talbot's private land, as evidenced by the submitted maps. This resolves the Forest Service's objection to claims 41H 139121-00 and 41H 139122-00.

8. The parties' Stipulation also refines and confirms the legal land description of POD 3, as evidenced by the submitted maps. This resolves the point of diversion issue remark, and the issue remark can be removed from the claim.

9. Claim 41H 139121-00 also received an issue remark to provide water users notice of DNRC modifications to the ditch name and means of diversion. The issue remark stated that if no objections were filed, the remark would be removed, and the claim elements would appear as decreed. No objections or notices of intent to appear were filed regarding the ditch name, and the means of diversion objection is resolved by the Stipulation. Therefore, this issue remark served its purpose and can be removed from the claim.

CONCLUSIONS OF LAW

1. The Water Court has exclusive jurisdiction to determine the extent of all water rights in Montana as they existed prior to July 1, 1973. *In re Deadman's Basin Water Users Ass'n*, 2002 MT 15, ¶ 15; Section 3-7-501, 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* status may be overcome by a preponderance of the evidence showing that an element of the claim is incorrect. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33.

3. The Water Court promotes and will facilitate resolution of objections and issue remarks through settlement and mediation. Rule 16(a), W.R.Adj.R. The Court is not bound by settlement agreements, and any settlement agreement is subject to the Court's approval and review. Rule 17(a), W.R.Adj.R.

4. If a claimant agrees to reduce or limit a claim element through a settlement agreement, the Water Court does not need to determine whether the burden of proof has been met. The Court may accept a claimant's requested reduction or limitation without further presentation of evidence unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

5. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248(2). When resolving issue remarks, the Court must weigh the issue remark and the information resulting in the issue remark against the claimed water right. Section 85-2-247(2), MCA.

6. The parties' Stipulation refines the points of diversion of claims 41H 139121-00 and 41H 139122-00 to limit the claim element to private land, as evidenced by the submitted maps. Although the Stipulation adds places of use to the claims and adjusts the periods of diversion, this is to conform with the point of diversion changes and does not constitute an expansion of the claims. Therefore, the Water Court may accept the Stipulated changes to resolve the Forest Service's objections.

7. There is sufficient evidence in the record to resolve the issue remarks on claim 41H 139121-00.

RECOMMENDATIONS

Based on the above Findings of Fact and Conclusions of Law, this Master recommends that the Water Court make the changes specified above to claims 41H 139121-00 and 41H 139122-00. Post-decree abstracts of the claims are served with this Report to confirm the recommended changes have been made in the State's centralized record system.

Julia J. Nordlund
Senior Water Master

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WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H

Water Right Number: 41H 139121-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
SUSAN A TALBOT
69 BROOKSIDE WAY
MISSOULA, MT 59802 3278

Priority Date: MAY 31, 1924

Type of Historical Right: USE

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 BUCK 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 | | SWSENW | 4 | 8S | 4E | GALLATIN |
| Period of Diversion: | APRIL 1 TO DECEMBER 1 | | | | | |
| Diversion Means: | LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 2 | | W2SESENW | 4 | 8S | 4E | GALLATIN |
| Period of Diversion: | JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: | LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 3 | | SESWNW | 4 | 8S | 4E | GALLATIN |
| Period of Diversion: | APRIL 1 TO DECEMBER 31 | | | | | |
| Diversion Means: | HEADGATE | | | | | |
| Ditch Name: | 320 DITCH | | | | | |
| Period of Use: | APRIL 1 TO DECEMBER 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 | | | W2SESENW | 4 | 8S | 4E | GALLATIN |
| 2 | | | SWSENW | 4 | 8S | 4E | GALLATIN |
| 3 | | | E2NENWSW | 4 | 8S | 4E | GALLATIN |
| 4 | | | SWNENWSW | 4 | 8S | 4E | GALLATIN |
| 5 | | | SENWSW | 4 | 8S | 4E | 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.

139121-00 139123-00

POINT OF DIVERSION NO.1 AND THE PLACE OF USE ARE ENTIRELY ON PRIVATE LAND.

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H

Water Right Number: 41H 139122-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
SUSAN A TALBOT
69 BROOKSIDE WAY
MISSOULA, MT 59802 3278

Priority Date: DECEMBER 31, 1937

Type of Historical Right: USE

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 WEST GALLATIN RIVER

Source Type: SURFACE WATER

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

| <u>ID</u> | <u>Govt Lot</u> | <u>Otr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------------------------|------------------------------|----------------|------------|------------|------------|---------------|
| 1 | | SENWSW | 4 | 8S | 4E | GALLATIN |
| Period of Diversion: | JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: | LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 2 | | W2NESW | 4 | 8S | 4E | GALLATIN |
| Period of Diversion: | JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: | LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 3 | | W2NENESW | 4 | 8S | 4E | GALLATIN |
| Period of Diversion: | JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: | LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 4 | | W2SESENW | 4 | 8S | 4E | GALLATIN |
| Period of Diversion: | JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: | LIVESTOCK DIRECT FROM SOURCE | | | | | |
| Period of Use: | JANUARY 1 TO DECEMBER 31 | | | | | |

***Place of Use:**

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Otr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | | W2SESENW | 4 | 8S | 4E | GALLATIN |
| 2 | | | W2NENESW | 4 | 8S | 4E | GALLATIN |
| 3 | | | W2NESW | 4 | 8S | 4E | GALLATIN |
| 4 | | | SENWSW | 4 | 8S | 4E | GALLATIN |

Remarks:

THE POINTS OF DIVERSION AND PLACES OF USE ARE ENTIRELY ON PRIVATE LAND.