

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

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

\*\*\*\*\*

CLAIMANT: Harold D. McReynolds

NOTICE OF INTENT TO APPEAR: State of Montana  
University System (MSU)

**CASE 41H-0337-R-2021**

41H 31232-00

41H 31233-00

41H 31234-00

41H 31235-00

41H 31236-00

**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**

Water right claims 41H 31232-00, 41H 31233-00, 41H 31234-00, 41H 31235-00, and 41H 31236-00 are owned by Harold D. McReynolds. The claims appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with issue remarks resulting from pre-decree examination by the Montana Department of Natural Resources and Conservation (DNRC). State of Montana University System (MSU) filed notices of intent to appear (NOIA). To address the issue remarks and NOIAs, the Water Court consolidated the claims into case 41H-0337-R-2021.

## **FINDINGS OF FACT**

1. Claims 41H 31232-00, 41H 31234-00, 41H 31235-00, and 41H 31236-00 received the following issue remarks:

THE GALLATIN COUNTY WATER RESOURCES SURVEY (1953) APPEARS TO INDICATE 127.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

2. Claim 41H 31233-00 received the following issue remarks:

A LATE OBJECTION HAS BEEN FILED TO THE ACRES IRRIGATED AND PLACE OF USE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

3. On December 7, 1995, Claimant McReynolds filed an Affidavit and map to correct the place of use of claim 41H 31233-00. However, Claimant failed to file the proper objection form, as requested by the Water Court.

4. On November 15, 2019, MSU filed NOIAs to claims 41H 31232-00 and 41H 31235-00.

5. On December 16, 2021, the Water Court ordered Claimant McReynolds to proceed with the late objection by December 22, 2021. The Court stated that the objection would be dismissed if Claimant did not proceed by the deadline. Although the December 22, 2021, deadline was inadvertently short, Claimant did not proceed with the late objection.

6. On December 29, 2021, the Water Court ordered Claimant McReynolds to confer with DNRC, pursuant to § 85-2-248, MCA, to resolve the acres irrigated issue remarks on the claims by January 31, 2022.

7. After a series of extensions, on May 2, 2022, Kara Huyser, Water Resource Specialist for the DNRC Bozeman Regional Office, filed a memorandum with the Water Court discussing the April 21, 2022, conference with Claimant McReynolds. In the conference, DNRC and Claimant McReynolds reviewed historical evidence, including Water Resource Survey imagery, and Ms. Huyser made the following recommendations:

- a. The current 162.00 acres irrigated listed on claims 41H 31232-00, 41H 31234-00, 41H 31235-00, and 41H 31236-00 is a historically accurate reflection of water use under the claims.
- b. The late objection filed December 7, 1995, by Claimant McReynolds to correct the place of use of claim 41H 31233-00 to 60.00 acres accurately reflects historical use of the claim.

8. The maximum acres of claims 41H 31232-00, 41H 31234-00, 41H 31235-00, and 41H 31236-00 can remain at 162.00, as currently appearing on the claim abstracts.

9. The maximum acres of claim 41H 31233-00 can be reduced to 60.00 acres and the place of use can be modified to the following:

Place of Use:							
<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	40.00		SWSW	34	2S	4E	GALLATIN
2	<del>24.00</del> 20.00		E2SE	33	2S	4E	GALLATIN
Total:	<del>64.00</del> 60.00						

10. The above issue remarks on claims 41H 31232-00, 41H 31233-00, 41H 31234-00, 41H 31235-00, and 41H 31236-00 can be resolved and removed.

11. The late objection to claim 41H 31233-00 filed by Claimant McReynolds can be resolved.
12. On June 27, 2022, MSU withdrew its NOIAs to claims 41H 31232-00 and 41H 31235-00, conditional upon no corrections being made to increase claim elements prior to the 41H Final Decree.
13. The claims also received issue remarks to provide notice of DNRC modifications to certain elements. These remarks served their purpose and can be removed.

#### 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 must resolve all issue remarks not resolved through the objection process. Section 85-2-248(2). The Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA. 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.
4. The Water Court is permitted to use information submitted by DNRC, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.
5. There is sufficient evidence in the record for the Water Court to resolve and remove the issue remarks on claims 41H 31232-00, 41H 31233-00, 41H 31234-00, 41H 31235-00, and 41H 31236-00.

## RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the Water Court make the above changes to 41H 31232-00, 41H 31233-00, 41H 31234-00, 41H 31235-00, and 41H 31236-00. Post-decree abstracts of the claims are served with this Report to confirm the recommended changes have been made in the State's centralized water right record system.

---

Julia J. Nordlund  
Senior Water Master

### **Service via USPS Mail:**

David L. Weaver  
Nash, Zimmer & Weaver  
1700 West Koch, Suite 4  
Bozeman, MT 59715

### **Service Via Electronic Mail:**

Dana Elias Pepper  
Bina R. Peters  
River and Range Law, PLLC  
PO Box 477  
Bozeman, MT 59711-0477  
(406) 599-7424  
dana@riverandrangelaw.com  
bina@riverandrangelaw.com  
office@riverandrangelaw.com

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

**Water Right Number:** 41H 31232-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** HAROLD D MCREYNOLDS  
2270 AXTELL ANCENY RD  
BOZEMAN, MT 59718

**Priority Date:** JUNE 1, 1941

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 2.50 CFS

**\*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:** 162.00

**Source Name:** WEST GALLATIN RIVER

**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		SENENW	33	3S	4E	GALLATIN

**Period of Diversion:** MAY 15 TO SEPTEMBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** COCKRILL DITCH

**Period of Use:** MAY 15 TO SEPTEMBER 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>
1	1.50		SENESE	33	2S	4E	GALLATIN
2	13.00		E2SESE	33	2S	4E	GALLATIN
3	1.30		SWNWSW	34	2S	4E	GALLATIN
4	40.00		SWSW	34	2S	4E	GALLATIN
5	64.60		E2NW	3	3S	4E	GALLATIN
6	41.60		W2NE	3	3S	4E	GALLATIN
<b>Total:</b>	162.00						

**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.

31232-00	31233-00	31234-00	31235-00	31236-00	31237-00
----------	----------	----------	----------	----------	----------

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

**Water Right Number:** 41H 31233-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** HAROLD D MCREYNOLDS  
2270 AXTELL ANCENY RD  
BOZEMAN, MT 59718

**Priority Date:** SEPTEMBER 1, 1937

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 1.25 CFS

**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:** 60.00

**Source Name** WASTE & SEEPAGE, UNNAMED TRIBUTARY OF FISH CREEK

**Source Type:** GROUNDWATER

SOURCE IS GROUNDWATER FED DRAG-LINE DITCH

**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		NWNWNW	3	3S	4E	GALLATIN

**Period of Diversion:** MAY 15 TO SEPTEMBER 15

**Diversion Means:** HEADGATE

2		E2SE	33	2S	4E	GALLATIN
---	--	------	----	----	----	----------

**Period of Diversion:** MAY 15 TO SEPTEMBER 15

**Diversion Means:** HEADGATE

3		SWSW	34	2S	4E	GALLATIN
---	--	------	----	----	----	----------

**Period of Diversion:** MAY 15 TO SEPTEMBER 15

**Diversion Means:** HEADGATE

**Period of Use:** MAY 15 TO SEPTEMBER 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>
1	40.00		SWSW	34	2S	4E	GALLATIN
2	20.00		E2SE	33	2S	4E	GALLATIN

**Total:** 60.00

---

**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.

31232-00

31233-00

31234-00

31235-00

31236-00

31237-00

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

**Water Right Number:** 41H 31234-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** HAROLD D MCREYNOLDS  
2270 AXTELL ANCENY RD  
BOZEMAN, MT 59718

**\*Priority Date:** JUNE 15, 1882

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**\*Flow Rate:** 224.00 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:** 162.00

**Source Name** WEST GALLATIN RIVER

**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		SENENW	33	3S	4E	GALLATIN

**Period of Diversion:** MAY 15 TO SEPTEMBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** COCKRILL DITCH

**Period of Use:** MAY 15 TO SEPTEMBER 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>
1	1.50		SENESE	33	2S	4E	GALLATIN
2	13.00		E2SESE	33	2S	4E	GALLATIN
3	1.30		SWNWSW	34	2S	4E	GALLATIN
4	40.00		SWSW	34	2S	4E	GALLATIN
5	64.60		E2NW	3	3S	4E	GALLATIN
6	41.60		W2NE	3	3S	4E	GALLATIN
<b>Total:</b>	162.00						

**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.

31232-00	31233-00	31234-00	31235-00	31236-00	31237-00
----------	----------	----------	----------	----------	----------

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

**Water Right Number:** 41H 31235-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** HAROLD D MCREYNOLDS  
2270 AXTELL ANCENY RD  
BOZEMAN, MT 59718

**Priority Date:** JUNE 1, 1880

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**\*Flow Rate:** 1.30 CFS

**\*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:** 162.00

**\*Source Name:** WEST GALLATIN RIVER

**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		SENWNW	22	3S	4E	GALLATIN

**Period of Diversion:** MAY 1 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** NOBLE DITCH

**Period of Use:** MAY 1 TO OCTOBER 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	1.50		SENESE	33	2S	4E	GALLATIN
2	13.00		E2SESE	33	2S	4E	GALLATIN
3	1.30		SWNWSW	34	2S	4E	GALLATIN
4	40.00		SWSW	34	2S	4E	GALLATIN
5	64.60		E2NW	3	3S	4E	GALLATIN
6	41.60		W2NE	3	3S	4E	GALLATIN
<b>Total:</b>	162.00						

**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.

31232-00	31233-00	31234-00	31235-00	31236-00	31237-00
----------	----------	----------	----------	----------	----------

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

**Water Right Number:** 41H 31236-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** HAROLD D MCREYNOLDS  
2270 AXTELL ANCENY RD  
BOZEMAN, MT 59718

**\*Priority Date:** JUNE 15, 1883

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 224.41 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:** 162.00

**\*Source Name:** FISH CREEK

**Source Type:** SURFACE WATER

THE SOURCE INCLUDES WATER COLLECTED IN A DRAIN DITCH TRIBUTARY TO FISH CREEK.

POINT OF DIVERSIONS 02 AND 03 ARE ON A DRAIN DITCH TRIBUTARY TO FISH CREEK.

**\*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		E2SWSW	34	2S	4E	GALLATIN

**Period of Diversion:** MAY 15 TO SEPTEMBER 15

**Diversion Means:** PUMP

2		NENWSW	3	3S	4E	GALLATIN
---	--	--------	---	----	----	----------

**Period of Diversion:** MAY 15 TO SEPTEMBER 15

**Diversion Means:** DITCH

3		NENENE	9	3S	4E	GALLATIN
---	--	--------	---	----	----	----------

**Period of Diversion:** MAY 15 TO SEPTEMBER 15

**Diversion Means:** DITCH

POINT OF DIVERSION NO. 01 IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION.

**Period of Use:** MAY 15 TO SEPTEMBER 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>
1	1.50		SENESE	33	2S	4E	GALLATIN
2	13.00		E2SESE	33	2S	4E	GALLATIN

3	1.30	SWNWSW	34	2S	4E	GALLATIN
4	40.00	SWSW	34	2S	4E	GALLATIN
5	64.60	E2NW	3	3S	4E	GALLATIN
6	41.60	W2NE	3	3S	4E	GALLATIN
<b>Total:</b>						162.00

---

**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.

31232-00	31233-00	31234-00	31235-00	31236-00	31237-00
----------	----------	----------	----------	----------	----------