

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

\*\*\*\*\*

CLAIMANTS: C.B. Kim Kelsey; Kelly Ambrose E. Kelsey

OBJECTORS: C.B. Kim Kelsey; Kelly Ambrose E. Kelsey;  
USA (Dept. of Agriculture Forest Service)

**CASE 41H-0051-R-2022**

41H 55074-00

41H 115465-00

41H 115475-00

41H 115478-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. 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, conclusions 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 serve 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

The claims in this case are owned by C.B. Kim Kelsey and Kelly Ambrose E. Kelsey and appeared in the Preliminary Decree for Basin 41H with Montana Department of Natural Resources and Conservation (DNRC) issue remarks. The claims received objections from Claimants and USA Dept. of Agriculture Forest Service.

### FINDINGS OF FACT

1. On September 12, 2022, the Parties submitted a Stipulation (“Stipulation”).
2. Claim 41H 55074-00 is a stock claim from an unnamed tributary of Taylor Fork Creek. The Preliminary Decree identifies both the point of diversion and place of use as being in the NW of Section 12, Township 9 South, Range 3 East (“Section 12”), in Gallatin County. The parties agreed that these descriptions need further refinement.
3. The point of diversion and place of use for Claim 41H 55074-00 should be clarified as follows:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SE	12	9S	3E	GALLATIN

4. Claim 41H 115465-00 is a stock claim from Taylor Fork Creek. The parties agree descriptions of the places of use and points of diversion from the Preliminary Decree are overbroad or inaccurate.
5. The point of diversion and place of use for Claim 41H 115465-00 should be clarified as follows to accurately depict historical usage based on the maps attached to the Stipulation:
  - a. Remove POD IDs 1 and 3. POD ID 4 (now 2) should be corrected to NWSWSE Sec. 9, Twp. 9S, Rge. 4E.
  - b. Remove POU ID 1.
6. Claim 41H 115475-00 is a stock claim from Taylor Fork Creek. Parties agree descriptions of the places of use and points of diversion from the Preliminary Decree are overbroad.
7. The point of diversion and place of use for Claim 41H 115475-00 should be

clarified as follows:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		<u>NWNE</u>	12	9S	3E	GALLATIN
2		<u>SENE</u>	12	9S	3E	GALLATIN

8. Claim 41H 115478-00 is an irrigation claim from Taylor Fork Creek. Parties agree descriptions of the places of use and points of diversion from the Preliminary Decree are inaccurate.

9. The point of diversion for Claim 41H 115478-00 should be clarified as follows to accurately depict historical usage based on the maps attached to the Stipulation:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		<u>SENE</u>	<u>NWSW</u> 8	9S	4E	GALLATIN
	Period of Diversion: APRIL 15 TO OCTOBER 15					
	Diversion Means: HEADGATE					
	Ditch Name: MARBLE DITCH NO. 1					
2		<u>SWNWSW</u>	<u>NWSWSE</u> 9	9S	4E	GALLATIN
	Period of Diversion: APRIL 15 TO OCTOBER 15					
	Diversion Means: HEADGATE					
	Diversion Means: MARBLE DITCH NO. 2					

10. The place of use for Claim 41H 115478-00 should be clarified as follows:

<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	48.00		<u>S2S2</u>	8	9S	4E	GALLATIN
2	22.00		<u>S2SE</u>	9	9S	4E	GALLATIN
3	17.00		<u>SWSE</u>	9	9S	4E	GALLATIN
Total:							87.00

11. The Parties state these changes resolve all objections and issue remarks.

### CONCLUSIONS OF LAW

1. 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.

2. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v.*

*Burkhartsmeyer et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master’s Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as “a relatively modest standard that the statutory criteria are ‘more probable than not’ to have been met.” *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

3. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, 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.

4. When resolving issue remarks, the Montana 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.

5. If a claimant agrees to reduce or limit an element of a claim, the Water Court does not need to determine whether the burden of proof has been met. The Water Court may accept a claimant’s requested reduction or limitation without further presentation of evidence. Rule 17(c) W.R.Adj.R.

6. The evidence entered into the record is sufficient to resolve the issue remarks that appeared on the above captioned claims. The issue remarks should be removed.

### **RECOMMENDATIONS**

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above to correct the Preliminary Decree for this Basin.

Post Decree Abstracts of Water Right Claim are served with this Report to confirm the recommended corrections have been made in the state’s centralized record system.

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Julia J. Nordlund  
Senior Water Master

**Service via USPS Mail**

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Kelly Ambros E. Kelsey  
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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
GALLATIN RIVER  
BASIN 41H**

**Water Right Number:** 41H 55074-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** C B KIM KELSEY  
3120 TAYLOR FORK RD  
GALLATIN GATEWAY, MT 59730 9676

KELLY AMBROS E KELSEY  
NINE QUARTER CIRCLE RANCH  
5000 TAYLOR FORK ROAD  
GALLATIN GATEWAY, MT 59730

**Priority Date:** MARCH 7, 1906

**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:** UNNAMED TRIBUTARY OF TAYLOR FORK 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		SENENW	12	9S	3E	GALLATIN

**Period of Diversion:** JULY 1 TO OCTOBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JULY 1 TO OCTOBER 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			SENENW	12	9S	3E	GALLATIN

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

**Water Right Number:** 41H 115465-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** C B KIM KELSEY  
3120 TAYLOR FORK RD  
GALLATIN GATEWAY, MT 59730 9676

**Priority Date:** JULY 20, 1903

**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:** TAYLOR FORK 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		SWSE	9	9S	4E	GALLATIN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		NWSWSE	9	9S	4E	GALLATIN
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** HEADGATE

**Ditch Name:** MARBLE DITCH NO.2

**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			SESW	9	9S	4E	GALLATIN
2			SWSE	9	9S	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.

115465-00

115478-00

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

**Water Right Number:** 41H 115475-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** C B KIM KELSEY  
3120 TAYLOR FORK RD  
GALLATIN GATEWAY, MT 59730 9676

**Priority Date:** OCTOBER 16, 1883

**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:** TAYLOR FORK 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		NWNE	12	9S	3E	GALLATIN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		SENE	12	9S	3E	GALLATIN
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**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>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWNE	12	9S	3E	GALLATIN
2			SENE	12	9S	3E	GALLATIN



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

**Water Right Number:** 41H 115478-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** C B KIM KELSEY  
3120 TAYLOR FORK RD  
GALLATIN GATEWAY, MT 59730 9676

**Priority Date:** JULY 20, 1903

**Type of Historical Right:** USE

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**\*Flow Rate:** 3.26 CFS

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 5 - LOW

**\*Maximum Acres:** 87.00

**Source Name:** TAYLOR FORK 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		SESW	8	9S	4E	GALLATIN

**Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** MARBLE DITCH NO.1

2		NWSWSE	9	9S	4E	GALLATIN
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**Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** MARBLE DITCH NO.2

**Period of Use:** APRIL 15 TO OCTOBER 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	48.00		S2S2	8	9S	4E	GALLATIN
2	22.00		S2SW	9	9S	4E	GALLATIN
3	17.00		SWSE	9	9S	4E	GALLATIN

**Total:** 87.00

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**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.

115465-00

115478-00