

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

* * * * *

CLAIMANT: Patrick & Carol T. Hemingway Trust

CASE 41H-0654-R-2022

41H 139043-00

41H 139044-00

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 139043-00 and 41H 139044-00 appeared in the Preliminary Decree for the Gallatin River ("Basin 41H") with issue remarks resulting from pre-decree examination by the Department of Natural Resources and Conservation ("DNRC"). To address the issue remarks, the Water Court consolidated the claims into case 41H-0654-R-2022.

FINDINGS OF FACT

1. On April 22, 1982, Carol T. Hemingway and Patrick Hemingway filed the Statements of Claim for irrigation claims 41H 139043-00 and 41H 139044-00, listing a point of diversion in the NENWSE of Sec. 26, Twp. 1S, Rge. 5E, Gallatin County for both claims. Maps were included with the Statements of Claim supporting this point of diversion.
2. Claims 41H 139043-00 and 41H 139044-00 appeared in the Basin 41H Preliminary Decree with following issue remark:
THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SWNESE SEC 23 TWP 1S RGE 5E GALLATIN COUNTY.
3. The Water Court set a filing deadline of September 9, 2022, for claimant Patrick and Carol T. Hemingway Trust ("Hemingway Trust") to file evidence resolving the foregoing issue remark. The Court stated that if nothing was filed by the deadline, the Court would conclude the Hemingway Trust agrees with DNRC's determinations and amend the point of diversion accordingly.
4. The filing deadline passed, and Hemingway Trust did not file evidence or contact the Water Court. However, upon further review of maps available in the claim files, the Court found that the point of diversion is NENWSE, Sec. 26, Twp. 1S, Rge. 5E, Gallatin County, as listed on the Statements of Claim and the Preliminary Decree abstracts.

5. The Water Court set a deadline of October 17, 2022, for Hemingway Trust to show cause as to why the Court should not remove the issue remark and leave the point of diversion as it appears on the Preliminary Decree abstracts. The Court stated that if nothing was filed, the Court would conclude that Hemingway Trust agrees with its determination.
6. The show cause deadline passed, and Hemingway Trust did not file evidence or contact the Water Court.
7. The point of diversion issue remarks can be removed from claims 41H 139043-00 and 41H 139044-00, and the claim element can remain as it appears on the Preliminary Decree abstracts.

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), MCA. The Court has 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.
4. When resolving issue remarks, the Water 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. The 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. If a claimant fails to comply with an order issued by the Water Court, the Court may, upon motion or its own initiative, issue such orders of sanction with regard thereto as are just. Sanctions applied against claimants may include termination of the claim; or modification of the claim to conform with data provided by DNRC, information by the Court, or information included in an objection. Rule 22, W.R.Adj.R.
6. Claimant Hemingway Trust did not respond to the Water Court's filing and show cause deadline orders. Therefore, it is proper for the Court to resolve the issue remarks on claims 41H 139043-00 and 41H 139044-00 using information available in the claim file.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the Water Court make the above-specified changes to claims 41H 139043-00 and 41H 139044-00. Post decree abstracts of the claims accompany this Report to confirm the changes have been made in the State's centralized water right record system.

Julia J. Nordlund
Senior Water Master

Service via USPS Mail:

Patrick & Carol T. Hemingway Trust
2890 Springhill Rd
Bozeman, MT 59718-8469

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

Water Right Number: 41H 139043-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: HEMINGWAY, PATRICK & CAROL T TRUST
2890 SPRINGHILL RD
BOZEMAN, MT 59718 8469

Priority Date: AUGUST 10, 1949

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 18.00 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: 1.00

Source Name: UNNAMED TRIBUTARY OF EAST 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		NENWSE	26	1S	5E	GALLATIN

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: PUMP

Period of Use: MAY 1 TO NOVEMBER 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	1.00		NENWSE	26	1S	5E	GALLATIN
Total:	1.00						

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.

139043-00 139044-00

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

Water Right Number: 41H 139044-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: HEMINGWAY, PATRICK & CAROL T TRUST
2890 SPRINGHILL RD
BOZEMAN, MT 59718 8469

Priority Date: JUNE 30, 1879

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 17.00 GPM

THE FLOW RATE OF THIS CLAIM HAS BEEN REDUCED TO 17 GPM PER ACRE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.

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: 1.00

Source Name: UNNAMED TRIBUTARY OF EAST 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		NENWSE	26	1S	5E	GALLATIN

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: PUMP

Period of Use: MAY 1 TO NOVEMBER 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	1.00		NENWSE	26	1S	5E	GALLATIN

Total: 1.00

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.

139043-00

139044-00