

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

* * * * *

CLAIMANT: Home Ranch LLC

CASE 41H-0667-R-2022

41H 136755-00

41H 136756-00

41H 136769-00

41H 136770-00

41H 136771-00

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 136755-00, 41H 136756-00, 41H 136769-00, 41H 136770-00, and 41H 136771-00 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 resolve the issue remarks, the Water Court consolidated the claims into case 41H-0667-R-2022.

FINDINGS OF FACT

1. On April 29, 1982, Frank Morgan, Inc. filed statements of claim for groundwater claims 41H 136755-00, 41H 136756-00, 41H 136769-00, 41H 136770-00, and 41H 136771-00. The filings each included a Notice of Completion of Groundwater Appropriation Without Well ("GW3," hereinafter "Notice of Completion") prepared by Horace Morgan, describing the means of diversion as pipes to a house and stock troughs. Although the statements of claim listed a December 31, 1963, filed appropriation priority date, the Notice of Completion listed an 1886 date of appropriation, as supported by a sworn statement of Horace Morgan, on behalf of Frank Morgan, Inc.
 - a. Domestic claim 41H 136755-00 and stock claim 41H 136771-00 claim the same NESENE, Sec. 21, Twp. 3N, Rge by. 5E, Gallatin County point of diversion from an unnamed groundwater spring, as identified on the statements of claim and Notice of Completion.
 - b. Domestic claim 41H 136756-00 and stock claim 41H 136770-00 list the same NENENE, Sec. 21, Twp. 3N, Rge. 5E, Gallatin County point of diversion from an unnamed groundwater spring, as identified on the statements of claim and Notice of Completion.

2. Claims 41H 136770-00 and 41H 136771-00 appeared in the Basin 41H Preliminary Decree with a December 31, 1886, priority date pursuant to the Notice of Completion date of appropriation and Morgan's sworn statement in the claim files. However, claims 41H 136755-00 and 41H 136756-00 appeared with December 31, 1963, priority dates, pursuant to the date listed on the statements of claim.
3. Claims 41H 136755-00 and 41H 136771-00 appeared in the Basin 41H Preliminary Decree with the following issue remark:

THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A
MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A
MULTIPLE USE ISSUE REMARK. 41H 136755-00, 41H 136771-00.
4. Claims 41H 136756-00 and 41H 136770-00 appeared in the Basin 41H Preliminary Decree with the following issue remark:

THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A
MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A
MULTIPLE USE REMARK. 41H 136756-00, 41H 136770-00.
5. Claims 41H 136755-00 and 41H 136756-00 appeared in the Basin 41H Preliminary Decree with the following issue remark:

THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY
DATE ON THE SUBMITTED GW3 WHICH SERVES AS A GW4 IS 12/31/1886.

 - a. This issue remark refers to Montana's 1961 Groundwater Code provisions, which required new groundwater appropriators between January 1, 1962, and July 1, 1973, to file both a Notice of Appropriation ("GW1") and Notice of Completion to have the priority date relate back to when the water was first diverted and used.
6. To resolve the above issue remarks, the Water Court ordered claimant Home Ranch LLC ("Home Ranch") to file evidence clarifying the multiple uses and priority dates of the claim.
7. On August 30, 2022, Home Ranch filed its response stating that it agrees with DNRC's multiple use determinations and that the appropriate multiple use

information remark should be placed on claims 41H 136755-00, 41H 136756-00, 41H 136770-00, and 41H 136771-00. Home Ranch further stated that because the groundwater was appropriated prior to January 1, 1962, the 1961 Groundwater Code provisions do not apply, and the priority date of the claims should be corrected to December 31, 1886.

8. The Water Court set a second filing deadline for Home Ranch to file additional evidence supporting the claimed 1886 priority date, however, upon further review of the claim file the Court determined that the Notice of Completion and sworn statement by Horace Morgan are sufficient to overcome the prima facie status of the December 31, 1963, priority date listed on the statements of claim for claims 41H 136755-00 and 41H 135756-00.
9. A multiple use information remark can be placed on claims 41H 136755-00 and 41H 136770-00, and claims 41H 136756-00 and 41H 136771-00. The associated issue remark can be removed. Further, the priority date of claims 41H 136755-00 and 41H 136756-00 can be corrected to December 31, 1886, and the associated issue remark removed.
10. Claim 41H 136769-00 appeared in the Basin 41H Preliminary Decree with an issue remark regarding a DNRC modification to the point of diversion. The purpose of this issue remark is to provide notice to other water users of the modification. No objections, counter-objections, or notices of intent to appear were filed in response to the modification. The issue remark served its 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), 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 85-2-248(2), MCA.
5. The Water Court promotes the resolution of objections and issue remarks through settlement. Settlement includes the documents filed by a claimant in cases where the claimant is the only party. Rule 17(a), W.R.Adj.R.
6. Home Ranch’s response to the Water Court’s order is sufficient to resolve the multiple use issue remarks on claims 41H 136755-00, 41H 136756-00, 41H 136770-00, and 41H 136771-00.
7. Information in the claim file is sufficient to resolve the priority date issue remarks on issue remarks on claims 41H 136755-00 and 41H 136756-00.

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 136755-00, 41H 136756-00, 41H 136769-00, 41H 136770-00, and 41H 136771-00. 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:

Home Ranch LLC
5400 Penwell Bridge Rd
Belgrade, MT 59714

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

Water Right Number: 41H 136755-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: HOME RANCH LLC
5400 PENWELL BRIDGE RD
BELGRADE, MT 59714

Priority Date: DECEMBER 31, 1886

Type of Historical Right: FILED

Purpose (use): DOMESTIC

Flow Rate: 26.93 GPM

Volume: 3.50 AC-FT

Households: 2

Maximum Acres: 0.75

Source Name: SPRING

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		NESENE	21	3N	4E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

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	0.75		SEWNNE	21	3N	4E	GALLATIN

Total: 0.75

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.

136755-00

136770-00

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

Water Right Number: 41H 136756-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: HOME RANCH LLC
5400 PENWELL BRIDGE RD
BELGRADE, MT 59714

Priority Date: DECEMBER 31, 1886

Type of Historical Right: FILED

Purpose (use): DOMESTIC

Flow Rate: 26.93 GPM

Volume: 3.50 AC-FT

Households: 2

Maximum Acres: 0.75

Source Name: SPRING

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		NENENE	21	3N	5E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

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	0.75		SEWNNE	21	3N	5E	GALLATIN

Total: 0.75

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.

136756-00

136771-00

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

Water Right Number: 41H 136769-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: HOME RANCH LLC
5400 PENWELL BRIDGE RD
BELGRADE, MT 59714

Priority Date: DECEMBER 31, 1886

Type of Historical Right: FILED

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: SPRING, UNNAMED TRIBUTARY OF LITTLE ROCKY CANYON CREEK

Source Type: SURFACE WATER

SPRING HYDROLOGICALLY RELATED TO SOURCE.

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		NWNWSW	16	3N	5E	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>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWNWSW	16	3N	5E	GALLATIN

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

Water Right Number: 41H 136770-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: HOME RANCH LLC
5400 PENWELL BRIDGE RD
BELGRADE, MT 59714

Priority Date: DECEMBER 31, 1886

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: 26.93 GPM

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: SPRING

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		NENENE	21	3N	5E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

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			NENENE	21	3N	5E	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.

136755-00 136770-00

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

Water Right Number: 41H 136771-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: HOME RANCH LLC
5400 PENWELL BRIDGE RD
BELGRADE, MT 59714

Priority Date: DECEMBER 31, 1886

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: 26.93 GPM

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: SPRING

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		NESENE	21	3N	5E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

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			NESENE	21	3N	5E	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.

136756-00

136771-00