

Montana Water Court
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41H-0791-R-2021

November 22, 2022

Montana Water Court

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

* * * * *

CLAIMANTS: Luke Stratford; Shana Stratford; James W. Clore,
IV; **Vanessa Clore**; Warmington Talla, Molly-
Property Trust No. 1

CASE 41H-0791-R-2021

41H 29099-00
41H 114978-00
41H 114979-00

**ORDER APPROVING SETTLEMENT, UPDATING OWNERSHIP
AND CLOSING CASE**

The Water Court included claims 41H 29099-00, 41H 114978-00, and 41H 114979-00 in the Preliminary Decree for Basin 41H, the Gallatin River Basin. The Preliminary Decree abstracts contain issue remarks identifying potential legal or factual issues with the claims. The claims did not receive objections. The Water Court consolidated the claims into this case to address an over-filed notice of appropriation issue remark common to all three claims.

On November 3, 2022, the current owners of the claims participated in a Court-ordered mediation. The mediator reported the parties reached a settlement and filed a copy of the settlement agreement with the report. This Order addresses whether the settlement resolves all pending issues so as to allow the case to be closed.

BACKGROUND

The Preliminary Decree describes claim 41H 29099-00 as a filed right to use water from an unnamed spring tributary to the West Gallatin River for irrigation use. The

Preliminary Decree abstract identifies the owners of the claims as Pennmont Foundation and Yellowstone Foundation Properties LLC and describes a 40.00-acre place of use. The abstract contains the following issue remarks:

THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 41H 29099-00, 41H 114978-00, 41H 114979-00.

SOURCE NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

The Preliminary Decree describes claim 41H 114978-00 as a filed right to use water from an unnamed waste and seepage tributary to the West Gallatin River for stock water use. The Preliminary Decree abstract identifies the owners of the claims as Don Leonhardt, Shanna Stratford and Luke Stratford. The abstract contains the same over-filed notice of appropriation remark as claim 41H 29099-00, but does not contain any other issue remarks.

The Preliminary Decree describes claim 41H 114979-00 as a filed right to use water from an unnamed waste and seepage tributary to the West Gallatin River for irrigation use. The Preliminary Decree abstract identifies the owners of the claims as Sue Karsky and Jerry Karsky, and describes a 99.50-acre place of use. Like claim 41H 114978-00, the Preliminary Decree abstract contains a single over-filed notice of appropriation remark that references the other two claims in this case.

The Department of Natural Resources and Conservation (“DNRC”) added the over-filed notice of appropriation remark to the claims during the claim reexamination it conducted in Basin 41H prior to issuance of the Preliminary Decree. The remark was included because all three claims rely on a single notice of appropriation filed in the

Gallatin County records by Zachariah Lay claiming 100 miner's inches (2.5 cfs). The sum of the three claims relying on the Lay notice exceeded this amount.

After consolidation, the Court addressed several filings made by the claim owners identified on the Preliminary Decree abstracts or their successors, primarily to clarify claim ownership and place of use. Ultimately the current claim owners were not able to resolve the over-filed notice of appropriation remark, so the Court ordered mediation following a request from the parties. (Doc. 22.00).

The current owners of claim 41H 29099-00 (James W. Clore), and claims 41H 114978-00 and 41H 114979-00 (Shana and Luke Stratford and the Wormington Talla, Molly Property Trust No. 1 ("Talla Trust")¹) participated in the mediation. At the mediation, the parties agreed to address the over-filed issue by reducing the claimed flow rate of the two irrigation claims as follows:

Claim	Decreed	Modified
41H 29099-00	1.52 cfs	1.0 cfs
41H 114979-00	<u>2.50 cfs</u>	<u>1.5 cfs</u>
Total	4.02 cfs	2.5 cfs

The settlement agreement indicates the parties also agreed to a multiple use remark for claims 41H 114978-00 and 41H 114979-00.

In addition to reporting on the mediation outcome, the mediation report noted the ownership of claim 41H 29099-00 has changed in the DNRC databased from James W. Clore IV and Vanessa Clore to Valley View Acres, LLC ("Valley View"). Valley View was provided notice of the mediation, but did not attend.

DISCUSSION

A. *Whether the Settlement Resolves the Issue Remarks.*

¹ The Court recognizes that vagaries of the DNRC water rights database cause the Talla Trust to be indexed as the "Wormington Talla, Molly Property Trust No. 1", which is not the correct legal name. Nothing in any order issued by the Water Court is intended to modify the Talla Trust's deeded interest in the property to which water right claims addressed in this Order are appurtenant.

In determining whether to accept the claim modifications proposed in the settlement agreement, the Court applies Rule 17, W.R.Adj.R. *Stafford v. West Gallatin Canal Co.*, 2022 Mont. Water LEXIS 85, *2. Under Rule 17(a), settlements are subject to Water Court review and approval when they resolve issues within the Court’s jurisdiction. *See also*, § 85-2-233(5)(b), MCA. Settlement agreements set the terms under which the parties contractually agree to resolve objections. A settlement may include a claimant’s legally binding commitment to modify claims to resolve issue remarks. *In re Lee*, Case 41H-1239-R-2021; 2022 Mont. Water LEXIS 830 (Order Approving Stipulation and Closing Case). As with any settlement filed with a court, the Water Court may rely on the terms of a settlement as long as they are “not contrary to law, court rule, or public policy.” *In re Marriage of Hill*, 265 Mont. 52, 58, 874 P.2d 705, 708 (1994).

When, as here, a settlement proposes modifications to water right claim elements, the Court must evaluate each proposed modification to ensure the modification is supported by the evidence and is consistent with what the Court may adjudicate and its obligation to resolve issue remarks. *In re Argabright*, Case 41I-265, 2014 Mont. Water LEXIS 9, (December 12, 2014) (affirming rejection of stipulation); *In re Dana Ranch Co.*, Case 41J-265, 2017 Mont. Water LEXIS 13 (rejecting stipulation); § 85-2-248(3), MCA. The evidentiary standard is relaxed when a settlement stipulation proposes to reduce an element of a water right claim. Rule 17(c), W.R.Adj.R.

The parties’ settlement in this case meets these standards. The settlement proposed claim modifications reduce the decreed flow rates of both irrigation claims. These reductions qualify for the relaxed evidentiary standard in Rule 17.

The parties agree to a multiple use information remark on stock water claim 41H 114978-00 and irrigation claim 41H 114979-00. A multiple use remark allows a single appropriation to be used for more than one purpose, but caps the amount of water that may be used at the combined amount historically used. The text of the remark says:

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.
114978-00 114979-00

The remark already exists on the abstracts for claims 41H 114978-00 and 41H 114979-00, so the settlement confirms the parties' agreement that the remark should remain on the claims. When coupled with the flow reductions to the irrigation claims, the multiple use remark resolves the over-filed notice of appropriation issue because the cumulative amount of the claims does not exceed 2.5 cfs, the converted amount from the Lay notice.

The source name remark on claim 41H 29099-00 also is resolved based upon the lack of any objection related to how the source name was described in the Preliminary Decree.

B. *Clarification of Ownership of Claim 41H 29099-00.*

The place of use and ownership of claim 41H 29099-00 has been the subject of several prior orders in this case. To summarize, the Court decreed the place of use as 40.00 acres in the SESE of Section 1, Township 3 South, Range 4 East, Gallatin County. At the time of the Preliminary Decree, the entire place of use was jointly owned by Pennmont Foundation and Yellowstone Foundation Properties LLC. The 40.00-acre place of use is comprised of two approximately 20-acre subdivided tracts of land known as Tract 4 and Tract 5 of Certificate of Survey No. 1285. Tract 4 is east of Tract 5.

After the Preliminary Decree issuance, Leep Land, LLC ("Leep") became the owner of both tracts. On March 22, 2022, Leep filed a motion seeking to be dismissed from this case on the grounds it no longer owns an ownership interest in claim 41H 29099-00 because it sold Tract 4 to the Clores without reserving any water rights. (Doc. 14.00). The Court denied the motion without prejudice because the property transaction documents Leep filed did not establish that Leep had divested itself of its interest in the claim as to Tract 5. The Court provided Leep the opportunity to supplement the evidence supporting its motion. Leep then filed a correction warranty deed on June 15, 2022. (Doc. 19.00). The correction deed clarifies that Leep conveyed all of its interest in claim 41H

29099-00 to the Clores, reserving no interest. Based on the representations made in Leep's filing, on June 24, 2022, the Court granted Leep's request to be removed as an owner of claim 41H 29099-00 in the Order Updating Ownership and Case Caption. (Doc. 21.00).

At some point Leep apparently sold Tract 5 to Valley View. For reasons that are not entirely clear, DNRC updated the ownership of the claim 41H 29099-00 to Valley View even though Leep retained no water rights to Tract 5. This update is inconsistent with the transactions documented to the Court by Leep, and the recorded correction deed, which provide that all interest in claim 41H 29099-00 is owned by the Clores and now is appurtenant only to Tract 4. To avoid any future confusion, the Court updates the place of use for the claim to limit it only to Tract 4, the parcel owned by the Clores. The Court updates the ownership to the Clores with Valley View removed as an owner.

ORDER

Therefore, the Court ORDERS that the settlement agreement filed with the mediation report is APPROVED. All issue remarks are resolved and removed from claims 41H 29099-00, 41H 114978-00, and 41H 114979-00, and the claims are modified as provided in this Order. The ownership of claim 41H 29099-00 is restored to James W. Clore IV and Vanessa Clore. Valley View Acres, LLC is removed as a co-owner. The place of use of claim 41H 29099-00 is modified to only the approximately 20 acres that comprise Tract 4 of Certificate of Survey No. 1285. All issues are resolved, and this case is CLOSED.

This Order includes post-decree abstracts of claims 41H 29099-00, 41H 114978-00, and 41H 114979-00 to confirm the modifications to the claims are made in the State's centralized water rights record system.

Stephen R. Brown
Associate Water Judge

Service via USPS Mail:

Luke Stratford
Shana Stratford
1001 Zachariah Ln
Bozeman, MT 59718

James W. Clore, IV
Vanessa M. Clore
P.O. Box 11023
Bozeman, MT 59719

Warmington Talla, Molly-Property
Trust No. 1
c/o Mark Talla
c/o Molly Talla
216 Three Feathers
Bozeman, MT 59718

Last Order
Valley View Acres LLC
280 W Kagy Blvd #D238
Bozeman, MT 59715-6065

****Caption and Service List Updated 11/16/22****

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

Water Right Number: 41H 29099-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JAMES W CLORE IV
PO BOX 11023
BOZEMAN, MT 59719
VANESSA CLORE
PO BOX 11023
BOZEMAN, MT 59719

Priority Date: MAY 31, 1887
Type of Historical Right: FILED
Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER/FLOOD
Flow Rate: 1.00 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:** 20.00
Source Name: SPRING, UNNAMED TRIBUTARY OF WEST GALLATIN RIVER
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		NWSWSW	6	3S	5E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 15
Diversion Means: HEADGATE
Period of Use: MAY 1 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	20.00		SESE	1	3S	4E	GALLATIN
Total:	20.00						

THE PLACE OF USE IS LOCATED IN CERTIFICATE OF SURVEY NO. 1285, TRACT 4.

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.

29098-00	29099-00	29101-00
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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H

Water Right Number: 41H 114978-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

LUKE STRATFORD
1001 ZACHARIAH LN
BOZEMAN, MT 59718

SHANA STRATFORD
1001 ZACHARIAH LN
BOZEMAN, MT 59718

WARMINGTON TALLA, MOLLY PROPERTY TRUST NO. 1
MOLLY WARMINGTON TALLA TRUSTEE
216 THREE FEATHERS RD
BOZEMAN, MT 59718 7612

Priority Date: MAY 31, 1887

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM.

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: WASTE & SEEPAGE, UNNAMED TRIBUTARY OF WEST GALLATIN RIVER

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		SWSWSW	6	3S	5E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

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			E2NW	1	3S	4E	GALLATIN
2			NENESW	1	3S	4E	GALLATIN
3			SWNE	1	3S	4E	GALLATIN
4			N2SE	1	3S	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.

114978-00

114979-00

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

Water Right Number: 41H 114979-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

LUKE STRATFORD
1001 ZACHARIAH LN
BOZEMAN, MT 59718

SHANA STRATFORD
1001 ZACHARIAH LN
BOZEMAN, MT 59718

WARMINGTON TALLA, MOLLY PROPERTY TRUST NO. 1
MOLLY WARMINGTON TALLA TRUSTEE
216 THREE FEATHERS RD
BOZEMAN, MT 59718 7612

Priority Date: MAY 31, 1887

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 1.50 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:** 99.50

Source Name: WASTE & SEEPAGE, UNNAMED TRIBUTARY OF WEST GALLATIN RIVER

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		SWSWSW	6	3S	5E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 7

Diversion Means: HEADGATE

Period of Use: MAY 1 TO OCTOBER 7

***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	43.50		E2NW	1	3S	4E	GALLATIN
2	2.00		NENESW	1	3S	4E	GALLATIN
3	6.00		SWNE	1	3S	4E	GALLATIN
4	48.00		N2SE	1	3S	4E	GALLATIN

Total: 99.50

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.

114978-00

114979-00