

41H-1035-R-2022

November 10, 2022

Montana Water Court

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

\*\*\*\*\*

CLAIMANTS: Robert D. Lane; Thomas E. Lane

**CASE 41H-1035-R-2022**

41H 139903-00

41H 139904-00

41H 139905-00

**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 139903-00, 41H 139904-00, 41H 139905-00 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-1035-R-2022.

## **FINDINGS OF FACT**

1. Claim 41H 139904-00 appeared in the Basin 41H Preliminary Decree with the following issue remarks:

CURRENT USE OF RIGHT IS QUESTIONABLE. PLACE OF USE IS HIGHLY SUBDIVIDED PER GALLATIN COUNTY RECORDS.

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

2. Claim 41H 139905-00 appeared in the Basin 41H Preliminary Decree with the following issue remarks:

THE CLAIMED PLACE OF USE AND ACRES IRRIGATED MAY BE QUESTIONABLE. REVIEW OF AVAILABLE DATA APPEARS TO INDICATE FEWER ACRES MAY HAVE BEEN IRRIGATED THAN HAS BEEN CLAIMED.

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

CURRENT USE OF RIGHT IS QUESTIONABLE. PLACE OF USE IS HIGHLY SUBDIVDED PER GALLATIN COUNTY RECORDS.

3. Pursuant to § 85-2-248(5), MCA, the Water Court ordered claimants Robert D. Lane and Thomas E. Lane (collectively, "Claimants") confer with the Bozeman Regional Office of the DNRC by August 8, 2022, to resolve the foregoing issue remarks on the claims.

4. On October 7, 2022, Water Resources Specialist Kara Huyser filed a Memorandum with the Water Court, stating that Claimants did not contact DNRC by the Water Court's deadline. In Claimants' absence, DNRC reviewed historical aerial and topographic imagery and information in the claim files, and makes the following recommendations:
  - a. Notify potential owners of their interest in the claims. DNRC states that the ownership issue remark was placed on claims 41H 139904-00 and 41H 139905-00 during preparation of the Basin 41H Summary Report. It appears that Claimants no longer own any part of the place of use, but Claimants have not filed sever or exempt forms with DNRC. To put potential owners on notice of their interest in the claims, DNRC included a list of potential owner geocodes with the Memorandum.
  - b. Correct the point of diversion legal land description of claim 41H 139904-00 from SWSENW, Sec. 2, Twp. 1S, Rge. 5E, Gallatin County to SWSENW, Sec. 2, Twp. 2S, Rge. 5E, Gallatin County. The correction is supported by the map attached to the Statement of Claim.
  - c. Remove the place of use and acres irrigated issue remark from claim 41H 139905-00. Water Resources Survey aerial imagery from 1947 and 1979 confirms the claimed historical irrigation.
  - d. Remove the flow rate issue remark from claim 41H 139905-00. The flow rate was previously removed by the Water Court pursuant to Rule 14(d), W.R.C.E.R., which provides that flow rates will not be decreed for natural sub-irrigation claims.
  - e. Remove the claim 41H 139905-00 volume quantification and replace it with an information remark limiting the volume to that historically and beneficially used. Rule 15(c), W.R.C.E.R., provides that volume will not be decreed for natural sub-irrigation rights.

5. The Water Court can accept DNRC's recommendations to resolve the issue remarks on claims 41H 139904-00 and 139905-00. Accordingly, the foregoing changes can be made to the claims and issue remarks removed.
6. Claim 41H 139903-00 appeared with an issue remark regarding DNRC's modification to the place of use. The purpose of this issue remark is to provide other water users notice of the modification. No objections, counterobjections, or NOIAs were filed. The issue remark served its purpose and can be removed.
7. The potential owner list Ms. Huyser attached to her report was extensive and does not serve to assist in the adjudication of these claims. While the Court is aware it is perpetuating outdated ownership of these water right claims, there is no substantive information to assist in the update of ownership.

#### 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 obtained by the Court, or information included in an objection. Rule 22, W.R.Adj.R.
6. Claimants failed to comply with the Water Court's order to confer with DNRC.

Therefore, it is proper for the Court to resolve the issue remarks and modify claims 41H 139903-00, 41H 139904-00, and 41H 139905-00 to conform with data obtained from DNRC and in the claim files.

### 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 139903-00, 41H 139904-00, 41H 139905-00. 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:**

Robert D. Lane  
% LB Cattle Co  
PO Box 1238  
Livingston, MT 59047

Thomas E. Lane  
% LB Cattle Co  
PO Box 1238  
Livingston, MT 59047

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

**Water Right Number:** 41H 139903-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** ROBERT D LANE  
% LB CATTLE CO  
PO BOX 1238  
LIVINGSTON, MT 59047

THOMAS E LANE  
% LB CATTLE CO  
PO BOX 1238  
LIVINGSTON, MT 59047

**Priority Date:** JUNE 13, 1922

**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:** 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		SWSE	2	2S	5E	GALLATIN

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		SW	35	1S	5E	GALLATIN
---	--	----	----	----	----	----------

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** OCTOBER 1 TO APRIL 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			SWSE	2	2S	5E	GALLATIN
2			SW	35	1S	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.

139903-00

139904-00

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

**Water Right Number:** 41H 139904-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** ROBERT D LANE  
% LB CATTLE CO  
PO BOX 1238  
LIVINGSTON, MT 59047

THOMAS E LANE  
% LB CATTLE CO  
PO BOX 1238  
LIVINGSTON, MT 59047

**Priority Date:** JUNE 13, 1922

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FURROW/FLOOD

**Flow Rate:** 3.50 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:** 240.00

**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		SWSE	2	2S	5E	GALLATIN

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

**Diversion Means:** DIKE

**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	80.00		W2NW	2	2S	5E	GALLATIN
2	160.00		SW	35	1S	5E	GALLATIN

**Total:** 240.00

**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.



139904-00

139905-00

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.

139903-00

139904-00

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

**Water Right Number:** 41H 139905-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** ROBERT D LANE  
% LB CATTLE CO  
PO BOX 1238  
LIVINGSTON, MT 59047

THOMAS E LANE  
% LB CATTLE CO  
PO BOX 1238  
LIVINGSTON, MT 59047

**Priority Date:** DECEMBER 31, 1900

**Type of Historical Right:** USE

**Purpose (use):** IRRIGATION

**Irrigation Type:** NATURAL SUBIRRIGATION

**Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE OF NATURAL SUBIRRIGATION.

**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:** 310.00

**Source Name:** SUBIRRIGATION, UNNAMED TRIBUTARY OF EAST 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		SW	35	1S	5E	GALLATIN

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

**Diversion Means:** SUBIRRIGATION

2		NW	2	2S	5E	GALLATIN
---	--	----	---	----	----	----------

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

**Diversion Means:** SUBIRRIGATION

**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	160.00		NW	2	2S	5E	GALLATIN
2	150.00		SW	35	1S	5E	GALLATIN

**Total:** 310.00

**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.

139904-00

139905-00