

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

* * * * *

CLAIMANTS: Angela Binder; Randy Binder; Curt Kurtz; Ruth
Kurtz; Deborah K. Moran; Rodney J. Moran;
Douglas E. Stubbs; Leisha L. Stubbs

CASE 41H-0815-R-2023
41H 136554-00

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

Water right claim 41H 136554-00 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 claim into case 41H-0815-R-2023.

FINDINGS OF FACT

1. Claim 41H 136554-00 appeared in the 41H Preliminary Decree with the following issue remark:

THE WATER COURT HAS BEEN PRESENTED WITH EVIDENCE INDICATING THE CORRECT PRIORITY DATE, ACRES IRRIGATED, AND PLACE OF USE OF WATER RIGHT CLAIM 41H W136554-00 MAY BE AS FOLLOWS:
PRIORITY DATE: JULY 1, 1899
MAXIMUM ACRES: 22.40
PLACE OF USE FOR IRRIGATION:

	ACRES	QTR SEC	SEC	TWP	RGE	COUNTY
001	3.80	NWNWSE	33	01N	04E	GALLATIN
002	3.80	SWNWSE	33	01N	04E	GALLATIN
003	3.70	NWSWSE	33	01N	04E	GALLATIN
004	3.70	NWSWSE	33	01N	04E	GALLATIN
005	3.70	SWSWSE	33	01N	04E	GALLATIN
006	3.70	SWSWSE	33	01N	04E	GALLATIN
TOTAL	22.40					

2. These proposed amendments to the priority date, acres irrigated, and place of use were agreed to in the Stipulation for Case 41H-202 during the 41H Temporary Preliminary Decree. Pursuant to a July 8, 1992 Master's Report in Water Court Case 41H-202, the Court ordered that the gray area remark be placed on this claim in order to provide proper notice of the potential changes.

3. During the 41H Preliminary Decree, no objections, counterobjections, or notices of intent to appear were filed.

4. This case was consolidated on July 18, 2023, and the Claimants were provided notice of the proposed changes and given a chance to comment.

5. The Court stated if nothing was filed by the deadline, the Court would conclude the Claimants agree with the changes requested in the Stipulation and may amend the place of use, priority date, and acres irrigated of claim 41H 136554-00.

6. No response was filed.

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). 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. The Water 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 and resolve issue remarks. Section 85-2-231(2), MCA.

6. Pursuant to Section 85-2-248(9), MCA, and Rule 22, W.R.Adj.R., when a claimant fails to comply with an Order issued by the Water Court, including an Order issued by a Water Master appointed by the Court, the Court, upon motion, or its own initiative, can: 1) amend the elements of the claim to conform with the information in the claim file or information obtained by the Court, or 2) terminate the claim.

7. The evidence provided in the 1992 Stipulation, combined with the lack of objections or participation from Claimants, is enough to support making the above changes to this claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the Water Court make the above-specified changes. Post Decree Abstract accompanies this Report to confirm the changes have been made in the State's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Angela Binder
Randy Binder
780 Bulltail Rd
Belgrade, MT 59714-8858

Curt Kurtz
Ruth Kurtz
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940 Bulltail Rd
Belgrade, MT 59714

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

Water Right Number: 41H 136554-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:
DOUGLAS E STUBBS
940 BULLTAIL RD
BELGRADE, MT 59714

LEISHA L STUBBS
940 BULLTAIL RD
BELGRADE, MT 59714

RODNEY J MORAN
1252 BULLTAIL RD
BELGRADE, MT 59714

DEBORAH K MORAN
1252 BULLTAIL RD
BELGRADE, MT 59714

CURT KURTZ
890 BULLTAIL RD
BELGRADE, MT 59714

RUTH KURTZ
890 BULLTAIL RD
BELGRADE, MT 59714

RANDY BINDER
780 BULLTAIL RD
BELGRADE, MT 59714 8858

ANGELA BINDER
780 BULLTAIL RD
BELGRADE, MT 59714 8858

Priority Date: JULY 1, 1899

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 58.30 GPM

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

Climatic Area: 3 - MODERATE

Maximum Acres: 22.40

Source Name: WEST 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		NWNESE	9	1S	4E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: BELL-DUNLAP DITCH

THE POINT OF DIVERSION IS ON A SIDE CHANNEL OF THE WEST GALLATIN RIVER.
THE SIDE CHANNEL OF THE RIVER MAY BE NATURAL OR EXCAVATED.

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	3.80		NWNWSE	33	1N	4E	GALLATIN
2	3.80		SWNWSE	33	1N	4E	GALLATIN
3	3.70		NWSWSE	33	1N	4E	GALLATIN
4	3.70		NWSWSE	33	1N	4E	GALLATIN
5	3.70		SWSWSE	33	1N	4E	GALLATIN
6	3.70		SWSWSE	33	1N	4E	GALLATIN
Total:	<u>22.40</u>						