

Montana Water Court
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FILED
08/15/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41H-0117-R-2023
Nordlund, Julia
20.00

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

* * * * *

CLAIMANTS: State of Montana Dept of Fish Wildlife & Parks;
Jennifer Stark; Jeremy Stark; Beatrice R. Taylor;
Susan R. Taylor

OBJECTORS: Jennifer Stark; Jeremy Stark; Susan R. Taylor;
City of Bozeman

NOTICE OF INTENT TO APPEAR: City of Bozeman

CASE 41H-0117-R-2023
41H 158512-00
41H 158513-00
41H 158514-00
41H 30160085

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 claims 41H 158512-00, 41H 158513-00, and 41H 158514-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H). The claims received issue remarks and objections. To address the objections, the Water Court consolidated the claims into case 41H-0117-R-2023.

On May 28, 2024, the parties submitted a Stipulation Settling Claims.¹ The Stipulation requests changes to resolve issue remarks and objections and also requests to split one of the claims as follows.

FINDINGS OF FACT

1. Claim 41H 158512-00 is a filed right for irrigation. The parties agree that this claim has not been used for many years and should be withdrawn.
2. Claim 41H 158513-00 is a filed right for irrigation by pump from a spring and an unnamed tributary of the East Gallatin River. The parties agree that no changes should be made to this claim.
3. Claim 41H 158514-00 is a use right for irrigation from the East Gallatin River. The parties request several changes to this claim
 - a. The priority date is currently listed as December 31, 1879. Parties stipulate to changing the priority date to April 3, 1892.
 - b. The parties stipulate that the point of diversion should be changes from the NWSW to the **NWNESW** of Sec. 31, Twp. 1S, Rge. 5E based on an error in the original filing which claimed a secondary point of diversion rather than the primary point of diversion.
 - c. The parties stipulate that claim 41H 158514-00 should be split. From parent claim 41H 158514-00, claim 41H 30160085 should be created. The original claim number shall belong to Starks and Taylors. Claim 41H 30160085 shall be Montana FWP's portion.

¹ The Stipulation and all other case documents are viewable in the Water Court's FullCourt Enterprise case management system.

- d. The elements of claim 41H 158514-00 changed after the split are:
- i. Owner: JENNIFER STARK, JEREMY STARK, BEATRICE TAYLOR, SUSAN TAYLOR
 - ii. Flow Rate: 0.82 CFS
 - iii. Maximum Acres: 66.5
 - iv. Place of Use:

ID	Acres	GovtLot	QtrSec	Section	Twp	Rge	County
1	11.3		SWSW 25	1S	5E	GALLATIN	
3	7.2		NWSW	25	1S	5E	GALLATIN
4	2.00		SWSENE	26	1S	5E	GALLATIN
5	9.80		NESE	26	1S	5E	GALLATIN
6	22.10		SESE	26	1S	5E	GALLATIN
7	14.10		N2NENE	35	1S	5E	GALLATIN
Total: 66.50							

- e. The elements of claim 41H 30160085 are identical to claim 41H 158514-00, with the following changes:
- i. Owner: STATE OF MONTANA DEPT OF FISH WILDLIFE AND PARKS
 - ii. Flow Rate: 0.43 CFS
 - iii. Maximum Acres: 35.00
 - iv. Place of use²:

ID	Acres	GovtLot	QtrSec	Section	Twp	Rge	County
1	19.10		NWNE	36	1S	5E	GALLATIN
2	9.80		SWNE	36	1S	5E	GALLATIN
3	6.10		SENE	26	1S	5E	GALLATIN
Total: 35.00							

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.

² Due to DNRC database bugs, the order of the place of use IDs appear differently on the split claim abstract.

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. Montana law allows claimants to amend their statements of claim, pursuant to § 85-2-233(6), MCA. Section 85-2-233(6), MCA provides:

After the issuance of a temporary preliminary decree or preliminary decree, notice of any motion to amend a statement of claim or a timely filed objection that may adversely affect other water rights must be published for 3 consecutive weeks in two newspapers of general circulation in the basin where the statement of claim or objection was filed. The notice must specify that any response or objection to the proposed amendment must be filed within 45 days of the date of the last notice. The water judge may order any additional notice of the motion as the water judge considers necessary. The cost of notice required pursuant to this subsection must be borne by the moving party.

4. The Water Court promotes the resolution of objections and issue remarks through settlement. Rule 16(a), W.R.Adj.R. However, the Court is not bound by settlement agreements. Any settlement reached by the parties is subject to review and approval by the Court. Rule 17(a), W.R.Adj.R.
5. The claimant of a water right may waive the advantage of § 85-2-227, MCA. If a claimant agrees to reduce or limit an element of a claim, the Water Court does not need to determine whether the burden of proof has been met and may accept the reduction or limitation without further presentation of evidence, unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.
6. The evidence in the record and filed with the parties’ Stipulation is sufficient to resolve issue remarks and accurately split claim 41H 158514-00.

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 abstracts of the claims accompany this Report to confirm the changes have been made in the State’s centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

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

Water Right Number: 41H 158512-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Owners:

JENNIFER STARK
684 BLUE ROAN LN
BELGRADE, MT 59714

JEREMY STARK
684 BLUE ROAN LN
BELGRADE, MT 59714

BEATRICE R TAYLOR
358 FARMLAND CROSSING
BELGRADE, MT 59714

SUSAN R TAYLOR
1045 REEVES RD
SUITE E
BOZEMAN, MT 59718

MONTANA, STATE OF DEPT OF FISH WILDLIFE & PARKS
PO BOX 200701
HELENA, MT 59620-0701

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF EAST GALLATIN RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41H 158513-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MONTANA, STATE OF DEPT OF FISH WILDLIFE & PARKS
PO BOX 200701
HELENA, MT 59620-0701

Priority Date: SEPTEMBER 1, 1934

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 157.08 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: 9.20

Source Name: SPRING, 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		NWSWNE	36	1S	5E	GALLATIN

Period of Diversion: JUNE 1 TO OCTOBER 1

Diversion Means: PUMP

Period of Use: JUNE 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	9.20		W2NE	36	1S	5E	GALLATIN
Total:	9.20						

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

Water Right Number: 41H 158514-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:

JENNIFER STARK
684 BLUE ROAN LN
BELGRADE, MT 59714

JEREMY STARK
684 BLUE ROAN LN
BELGRADE, MT 59714

BEATRICE R TAYLOR
358 FARMLAND CROSSING
BELGRADE, MT 59714

SUSAN R TAYLOR
1045 REEVES RD
SUITE E
BOZEMAN, MT 59718

Priority Date: APRIL 3, 1892

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 0.82 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: 66.50

Source Name: 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		NWNESW	31	1S	6E	GALLATIN
Period of Diversion:		JUNE 1 TO OCTOBER 1				
Diversion Means:		HEADGATE				
Period of Use:		JUNE 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	11.30		SWSW	25	1S	5E	GALLATIN
2	7.20		NWSW	25	1S	5E	GALLATIN
3	2.00		SWSENE	26	1S	5E	GALLATIN

4	9.80	NESE	26	1S	5E	GALLATIN
5	22.10	SESE	26	1S	5E	GALLATIN
6	14.10	N2NENE	35	1S	5E	GALLATIN
Total:						
	66.50					

Remarks:

SPLIT CLAIM NO. 41H 30160085 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.
AUTHORIZATION TO CHANGE POINT OF DIVERSION ISSUED 03/28/1991.

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

Water Right Number: 41H 30160085 STATEMENT OF CLAIM
Version: 1 -- ORIGINAL RIGHT
Status: ACTIVE

Owners: MONTANA, STATE OF DEPT OF FISH WILDLIFE & PARKS
PO BOX 200701
HELENA, MT 59620-0701

Priority Date: APRIL 3, 1892

Type of Historical Right: USE

Purpose (Use): IRRIGATION
Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 0.43 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: 35.00

Source Name: 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		NWNESW	31	1S	6E	GALLATIN

Period of Diversion: JUNE 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: JUNE 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	6.10		SENE	26	1S	5E	GALLATIN
2	19.10		NWNE	36	1S	5E	GALLATIN
3	9.80		SWNE	35	1S	5E	GALLATIN
Total:	35.00						

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41H 158514-00.

AUTHORIZATION TO CHANGE POINT OF DIVERSION ISSUED 03/28/1991.