

Montana Water Court
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FILED
08/02/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41H-0533-R-2024
Nordlund, Julia
2.00

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

CLAIMANTS: Clearview Investments LLC; East Branch
Ranches LLC

CASE 41H-0533-R-2024
41H 139115-00

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 139115-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with issue remarks from pre-decree examination by the Department of Natural Resources and Conservation (“DNRC”). To address the issue remarks, the Water Court consolidated the claims into case 41H-0533-R-2024.

FINDINGS OF FACT

1. Claim 41H 139115-00 received the following issue remarks:

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

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON THE EAST GALLATIN RIVER WITH A PRIORITY DATE PREDATING CASE NO. 1594, GALLATIN COUNTY.

THE TYPE OF IRRIGATION SYSTEM CANNOT BE CONFIRMED. IT IS UNCLEAR IF THIS RIGHT SHOULD BE DEFINED BY FLOW RATE OR VOLUME. THIS RIGHT MAY INVOLVE SUBIRRIGATION.

2. This claim has already been through adjudication in the Temporary Preliminary Decree in Water Court Case 41H-315. The Court addressed the place of use and ownership but declined to resolve the point of diversion and irrigation type issues.

3. The Order Consolidating stated these issue remarks do not overcome the prima facie status of the claims and there is not enough information in the claim file to support making any changes to the claim.

4. Claimants were given until June 7, 2024, to file evidence to if they agree with the DNRC. The Court stated if nothing was filed by the deadline, the Court would assume the Claimants don't agree with the DNRC's determinations and the claim would not change.

5. The Claimants filed nothing.

6. The DNRC issue remarks should be removed.

CONCLUSIONS OF LAW

1. 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.

2. 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.

3. 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.

4. There is not enough evidence which supports making changes to the claim based on DNRC issue remarks. This combined with the lack of participation from Claimants should result in no changes being made to the claim.

5. The issue remarks appearing on the claim do not overcome the prima facie status of the claim. Issue remarks should be removed.

RECOMMENDATIONS

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Clearview Investments LLC
% Gary E Rieschel
1920 4th Ave Unit 1204
Seattle, WA 98101-5112

East Branch Ranches LLC
PO Box 3111
Bozeman, MT 59772-3111

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

Water Right Number: 41H 139115-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CLEARVIEW INVESTMENTS LLC
%GARY E RIESCHEL
1920 4TH AVE UNIT 1204
SEATTLE, WA 98101-5112

EAST BRANCH RANCHES LLC
PO BOX 3111
BOZEMAN, MT 59772-3111

Priority Date: DECEMBER 1, 1901

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 12.50 CFS

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:** 430.00

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		NESENE	4	1N	4E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

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	32	2N	4E	GALLATIN
2	80.00		W2NE	32	2N	4E	GALLATIN
3	40.00		N2N2SW	32	2N	4E	GALLATIN
4	10.00		SESESW	32	2N	4E	GALLATIN
5	20.00		E2SESW	32	2N	4E	GALLATIN
6	80.00		W2SE	32	2N	4E	GALLATIN
7	40.00		SESE	32	2N	4E	GALLATIN

Total: 430.00