

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

\*\*\*\*\*

CLAIMANTS: Cheryl D. Ashe; William J. Ashe; Clark &  
Sherry Dickerson Family Protection Trust;  
Michael Ketchen; Joshua Roda; Laura Roda;  
Heike Schwarze; Jurgen Schwarze; Allan K.  
Skogen; Janelle F. Skogen; Brian Ashe

**CASE 41H-0103-R-2024**

41H 103725-00

41H 115525-00

41H 30115296

OBJECTOR: Terry Fluke

NOTICE OF INTENT TO APPEAR: State of Montana  
University System (MSU)

**CLOSING ORDER**

**BACKGROUND**

The Water Court included claims 41H 103725-00, 41H 115525-00, and 41H 30115296 in the Preliminary Decree for the Gallatin River Basin (Basin 41H). The preliminary decree abstracts include issue remarks. The claims did not receive objections following the Preliminary Decree, but an unresolved late objection from the Basin 41H Temporary Preliminary Decree is noted in the issue remarks. The State of Montana University System (MSU) filed a notice of intent to appear.

The Preliminary Decree describes claim 41H 103725-00 as a decreed right with a June 1, 1877 priority date to divert 1.08 cfs from the West Gallatin River for irrigation use. The claim is owned jointly by Brian J. Ashe, Glenna M. Derham, and William Derham. The Preliminary Decree abstract includes the following issue remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE  
FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM  
OF THE CLAIMED FLOW RATES EXCEEDS THE 43 MINER'S INCHES

DECREED IN CASE NO. 3850, GALLATIN COUNTY. 41H 103725-00, 41H 115525-00, 41H 30115296.

A CLERICAL CORRECTION HAS BEEN MADE TO THE POINT OF DIVERSION . BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHT MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

A LATE OBJECTION HAS BEEN FILED TO THE OWNERSHIP, VOLUME, ACRES IRRIGATED, SOURCE AND FLOW RATE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

The Preliminary Decree describes claim 41H 115525-00 as a decreed right with a June 1, 1877 priority date to divert 1.08 cfs from the West Gallatin River for irrigation use. The claim is owned jointly by nine different persons. The Preliminary Decree abstract includes the same decree exceeded and point of diversion clerical correction remarks as claim 41H 103725-00.

The Preliminary Decree describes claim 41H 30115296 as a decreed right with a June 1, 1877 priority date to divert 20.00 gpm from the Gallatin River with the same June 1, 1877 priority date as the other two claims. It also received several issue remarks, including the decree exceeded remark. The claim is owned by the Clark & Sherry Dickerson Family Protection Trust (“Dickerson Trust”). On December 17, 2024, the Dickerson Trust filed a withdrawal of claim 41H 30115296. (Doc. 18.00).

On June 10, 2025, counsel for claimants Joshua and Laura Roda filed a Stipulation and Settlement Agreement to Resolve Objection, Notice of Intent to Appear, and DNRC Issue Remarks (“Stipulation”). (Doc. 30.00). The Stipulation is signed by some, but not all parties.

On June 16, 2025, the Court issued a Show Cause Order. (Doc. 31.00). The Order set a July 3, 2025 deadline for any non-signatory party to show cause why the Court should not accept the Stipulation. No one responded to the Order other than MSU, which filed a notice that it has no objection to the terms of the Stipulation.

## **DISCUSSION**

The primary issue in this case is resolution of the decree exceeded issue remark. Claims 41H 103725-00 and 41H 115525-00 both are claimed and described in the Preliminary Decree as “decreed” rights. This means the evidentiary support for the claims is a prior district court decree. *See* W.R.Adj.R. 2(b)(defining “decreed right”). The decree referenced in the remark is “Case No. 3850, Gallatin County.” Case 3850 is a Montana state district court decision in the case *W.D. Bell v. F.K. Armstrong* (Mont. Ninth Jud. Dist., Gallatin County, Oct. 7. 1909) (“*Bell v. Armstrong Decree*”). The *Bell v. Armstrong Decree* adjudicated and tabulated certain water rights on the West Gallatin River and its tributaries.

According to information in the claim files and also attached to the Stipulation, claim 41H 103725-00 is based on a 43 miner’s inch right decreed to William H. Michell, as successor in interest to Peter Metzger, with a June 1, 1877 priority date. Claim 41H 115525-00 also is a 43 miner’s inch right with a June 1, 1877 priority date, decreed to Peter LeBeau, also a successor to Peter Metzger. Even though the two claims have a common original party, the same flow rate, and the same priority date, the evidence attached to the Stipulation is sufficient to prove they are two separate water rights, so as to resolve the issue remark.

The terms of the Stipulation do not ask the Court to modify the elements of any of the claims. The 1.08 cfs flow rate for each claim is equivalent to the 43 miner’s inches decreed to each claim in the *Bell v. Armstrong Decree*. Nothing further is required to resolve the decree exceeded issue remark.

The other issue remarks provided notice and generated no objections so they are resolved and can be removed from the abstracts.

## **ORDER**

Therefore, it is ORDERED that (1) claim 41H 30115296 is DISMISSED; (2) the Stipulation is APPROVED; and (3) all issue remarks are RESOLVED and removed from the claims 41H 103725-00 and 41H 115525-00 without modifying any elements.

This Order includes post-decree abstracts of claims 41H 103725-00, 41H 115525-00, and 41H 30115296 to confirm the modifications to the claims are made in the State's centralized water rights record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

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

**Water Right Number:** 41H 103725-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** BRIAN J ASHE  
394 DEER SPRING LN  
BOZEMAN, MT 59718  
  
GLENN M DERHAM  
%MIKE DERHAM  
15207 12TH DR SE  
MILL CREEK, WA 98012-3082

WILLIAM DERHAM  
%MIKE DERHAM  
15207 12TH DR SE  
BOTHELL, WA 98012-3082

**Priority Date:** JUNE 1, 1877

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 1.08 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:** 205.00

**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		SENWNW	22	3S	4E	GALLATIN

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

**Diversion Means:** HEADGATE

**Ditch Name:** NOBLE DITCH

**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	38.00		SWNE	10	3S	4E	GALLATIN
2	38.00		NWNE	10	3S	4E	GALLATIN
3	39.50		NENW	10	3S	4E	GALLATIN
4	39.50		SENW	10	3S	4E	GALLATIN

5	40.00	SESW	3	3S	4E	GALLATIN
6	4.50	S2S2NESW	3	3S	4E	GALLATIN
7	4.50	W2W2SWSE	3	3S	4E	GALLATIN
8	1.00	SWSWNWSE	3	3S	4E	GALLATIN
<b>Total:</b>						
	<u>205.00</u>					

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

**Water Right Number:** 41H 115525-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:**

CHERYL D ASHE  
1870 PINE GROVE LN  
KALISPELL, MT 59901

WILLIAM J ASHE  
1870 PINE GROVE LN  
KALISPELL, MT 59901

MICHAEL KETCHEN  
45 LAKE ST  
SALEM, NH 03079

JOSHUA RODA  
664 TERRACE LOOP  
BOZEMAN, MT 59718

LAURA RODA  
664 TERRACE LOOP  
BOZEMAN, MT 59718

HEIKE SCHWARZE  
% ELLIOTT, DUKE CUSTOM HOMES  
PO BOX 23  
GALLATIN GATEWAY, MT 59730

JURGEN SCHWARZE  
% ELLIOTT, DUKE CUSTOM HOMES  
PO BOX 23  
GALLATIN GATEWAY, MT 59730

ALLAN K SKOGEN  
3698 LEMHI TRAIL  
BOZEMAN, MT 59718

JANELLE F SKOGEN  
3698 LEMHI TRAIL  
BOZEMAN, MT 59718

**Priority Date:** JUNE 1, 1877

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.08 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:** 165.00

**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		SENWNW	22	3S	4E	GALLATIN

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

**Diversion Means:** HEADGATE

**Ditch Name:** NOBLE DITCH

**Period of Use:** MAY 1 TO NOVEMBER 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	40.00		NESW	3	3S	4E	GALLATIN
2	80.00		W2SE	3	3S	4E	GALLATIN
3	30.00		SESE	3	3S	4E	GALLATIN
4	15.00		NENE	10	3S	4E	GALLATIN
<b>Total:</b>		165.00					



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

**Water Right Number:** 41H 30115296 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** DISMISSED

**Owners:** DICKERSON, CLARK & SHERRY FAMILY PROTECTION TRUST  
PO BOX 737  
GALLATIN GATEWAY, MT 59730-0737

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** DOMESTIC

**Flow Rate:**

**Volume:**

**Source Name:** GALLATIN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.