

Montana Water Court
P.O. Box 1389
Bozeman, MT 59711-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

FILED
07/30/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41H-0991-R-2024
Stern, Anika
7.00

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

* * * * *

CLAIMANTS: Braewood House, LLC; Norman AG Ventures
LLC; ~~Kainz Revocable Trust DTD 05/23/2023~~

CASE 41H-0991-R-2024
41H 140918-00
41H 140925-00

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

FINDINGS OF FACT

1. Braewood House, LLC, (Braewood), Norman AG Ventures, LLC and Kainz Revocable Trust DTD (Kainz) are the record co-owners of claim 41H 140918-00.

Braewood House, LLC, (Braewood) and Norman AG Ventures are the record co-owners of claim 41H 140925-00.

2. On December 23, 2024, record owners Braewood and Norman AG Ventures, LLC were ordered to meet with a DNRC employee to address issue remarks decreed on claims 41H 140918-00 and 41H 140925-00:

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

(Doc.¹1.00).

3. On January 23, 2025, the Kainz Revocable Trust DTD 05/23/2023 (Kainz) submitted an ownership update to the DNRC for claim 41H 140918-00. The DNRC added Kainz as a co-owner of claim 41H 140918-00.

4. On March 20, 2025, DNRC Water Resources Specialist Jackson Alvey filed a Memorandum. (Doc. 3.00). Mr. Alvey indicated he was contacted by Braewood, through counsel, and documentation was subsequently provided along with a written proposal. Additionally, Kainz contacted Mr. Alvey. Mr. Alvey reported that he reviewed various materials to prepare the Memorandum. Mr. Alvey's recommendations were consistent with Braewood's proposal for claims 41H 140918-00² and 41H 140925-00:

41H 140918-00:

Maximum Acres:		480.00	70.00					
Place of Use:								
ID	Acres	Govt Lot	Qtr Sec	Sec	Twtp	Rge	County	
1	40.00		SWNW	1	1N	5E	GALLATIN	
2	30.00	120.00	NWNW	N2N2	1	1N	5E	GALLATIN
Total:		480.00	70.00					

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

² Mr. Alvey recommended POU 2 for claim 41H 140918-00 be described as the N2N2 of Section 1, Braewood proposed that POU 2 be described as the NWNW of Section 1; it appears the discrepancy was an oversight.

41H 140925-00:

Maximum Acres: 84.00 85.00

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	85.00	84.00	E2NE	2	1N	5E	GALLATIN
Total:	84.00	85.00					

Mr. Alvey noted that the recommended modifications to claim 41H 140918-00 “could affect the ownership interest of Kainz Revocable Trust in Claim 41H 140918-00...”

5. To determine if the Claimants agreed or disagreed with Mr. Alvey’s recommendations along with modifying the volume of both claims to a volume information remark, an Order was issued. The Order set a deadline for the parties to show cause why the following modifications should not be made to claims 41H 140918-00 and 41H 140925-00:

41H 140918-00:

Owners: BRAEWOOD HOUSE, LLC
409 METCALF RD
THOMASVILLE, GA 31792

~~KAINZ REVOCABLE TRUST DTD 05/23/2023~~
~~PATRICK J & KIRSTEN KAINZ TRUSTEES~~
~~1072 EVAN REESE CREEK RD~~
~~BELGRADE, MT 50714 8466~~

NORMAN AG VENTURES LLC
9800 GEE NORMAN RD
BELGRADE, MT 59714

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

Volume: 304.00 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 480.00 70.00

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	40.00		SWNW	1	1N	5E	GALLATIN
2	30.00	120.00	NWNW	1	1N	5E	GALLATIN
Total:	480.00	70.00					

VF009: THE TOTAL VOLUME OF THIS RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

41H 140925-00:

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

Volume: 453.00 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 84.00 85.00

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	85.00	84.00	E2NE	2	1N	5E	GALLATIN
Total:	84.00	85.00					

VF009: THE TOTAL VOLUME OF THIS RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

The Order included the following language:

If nothing is filed by the June 30, 2025 deadline, the modifications noted above will be made to claims 41H 140918-00 and 41H 140925-00, including removing Kainz Revocable Trust DTD 05/23/2023 as a co-owner of claim 41H 140918-00. (emphasis in original).

(Doc. 6.00). Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Natural subirrigation claims are not decreed with a quantified volume. Rule 15(c), W.R.C.E.R. The quantified volume should be removed from both claims and the following remark should be added instead: “THE TOTAL VOLUME OF THIS RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.”

4. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

RECOMMENDATIONS

1. Claims 41H 140918-00 and 41H 140925-00 should be modified as shown in Finding of Fact No. 5.

2. The issue remarks should be removed from claims 41H 140918-00 and 41H 140925-00.

Abstracts are attached.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Kainz Revocable Trust DTD 05/23/2023
1072 Evan Reese Creek Rd
Belgrade, MT 59714
(Last Order)

Norman AG Ventures LLC
9800 Gee Norman Rd
Belgrade, MT 59714

Potential Owner
Kainz Family Limited Partnership
~~5263 Hamm Rd~~
~~Belgrade, MT 59714~~
(Returned mail unable to forward)

Service Via Electronic Mail

Jennifer L Farve
Jeremy A Michael
Cusick, Farve, Mattick, Michael, PC
office@cmrlawmt.com
(Attys for: Braewood House)

Service List Updated: 7/30/2025

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

Water Right Number: 41H 140918-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BRAEWOOD HOUSE, LLC
409 METCALF RD
THOMASVILLE, GA 31792

NORMAN AG VENTURES LLC
9800 GEE NORMAN RD
BELGRADE, MT 59714

Priority Date: JUNE 2, 1879

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: 70.00

Source Name: SUBIRRIGATION, UNNAMED TRIBUTARY OF REESE CREEK

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		N2	1	1N	5E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SUBIRRIGATION

Period of Use: JANUARY 1 TO DECEMBER 31

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		SWNW	1	1N	5E	GALLATIN
2	30.00		NWNW	1	1N	5E	GALLATIN
Total:	70.00						

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.

139779-00	139782-00	140918-00	140919-00	140920-00	140921-00
140922-00	140925-00	140929-00	140930-00	140932-00	

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

Water Right Number: 41H 140925-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BRAEWOOD HOUSE, LLC
409 METCALF RD
THOMASVILLE, GA 31792

NORMAN AG VENTURES LLC
9800 GEE NORMAN RD
BELGRADE, MT 59714

Priority Date: MARCH 20, 1877

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: 65.00

Source Name: SUBIRRIGATION, UNNAMED TRIBUTARY OF REESE CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		E2NE	2	1N	5E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SUBIRRIGATION

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	65.00		E2NE	2	1N	5E	GALLATIN
Total:	65.00						

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.

139779-00	139782-00	140918-00	140919-00	140920-00	140921-00
140922-00	140925-00	140929-00	140930-00	140932-00	