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Melissa Lockman
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Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41H-6009-A-2026
Brown, Stephen R
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Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

MONTANA WATER COURT
UPPER MISSOURI DIVISION
GALLATIN RIVER
BASIN 41H
PRELIMINARY DECREE

* *

CLAIMANTS: Brian J. Ashe; Axtell Properties LLC; Janita Douglas; Meyrick Douglas; Oscar Douglas	**CASE 41H-6009-A-2026** 41H 103725-00 41H 103726-00 41H 30177056 41H 30177059 41H 30177062 41H 30177063

ORDER SPLITTING CLAIMS

BACKGROUND

The Water Court decreed claims 41H 103725-00 and 41H 103726-00 in the Preliminary Decree for the Gallatin River Basin issued on October 11, 2018. The Court consolidated claim 41H 103725-00 and several other claims in case 41H-0103-R-2024. On July 9, 2025, the Court issued a Closing Order. The Closing Order approved the terms of a stipulated agreement, resolved issue remarks, and resolved and dismissed objections.

The Court consolidated claim 41H 103726-00 and several other claims in case 41H-0365-R-2021. On 29, 2021, the Court issued a Closing Order resolving issue remarks and resolving and dismissing objections to claim 41H 103726-00.

Even though the Court addressed the two claims in two separate cases, the two claims share the same point of diversion, place of use, and ownership. The State's

centralized water rights record system currently identifies both claims as being owned jointly by Brian J. Ashe, Glenna M. DeRham and William DeRham.

On June 9, 2026, Meyrick Douglas, Janita St. Clair Douglas, and Oscar Douglas (collectively, "Douglas") filed a motion asking the Court to split the each of the two claims into three separate claims. (Doc. 1.00). The motion asks the Court to allocate a portion of each claim (a) to Brian J. Ashe ("Ashe"); (b) to Axtell Properties, LLC ("Axtell"); and (c) to Douglas based on the place of use as follows:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County	Flow Rate[1]
Ashe								
1	24.00		SENW	3	3S	4E	GALLATIN	
2	4.00		S2S2NESW	3	3S	4E	GALLATIN	
Total	28.00							0.15 cfs 0.25 cfs
Axtel								
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	
Total	155.00							0.86 cfs 1.39 cfs
Douglas								
1	12.00		S2SESW	3	3S	4E	GALLATIN	
Total	12.00							0.07 cfs 0.11 cfs
Cumulative								
Total	195.00							1.08 cfs 1.75 cfs

Douglas supported the motion with copies of several instruments of conveyance, maps that illustrate the conveyances, and copies of certificates of survey that depict various the creation of various legally subdivided parcels within the places of use. Douglas served the motion on Ashe and Axtell. Douglas did not serve the motion on the

[1] The two flow rates for each owner and the cumulative total correlate to the separate claims as reflected on the abstracts included with this Order.

DeRhams. However, the documents of conveyance filed by Douglas indicate the DeRhams separately conveyed their interests to Ashe (Doc. 1.00, Ex. E.) and to Axtel (Doc. 1.00, Ex. F). Based on these conveyances, the Court dismissed the DeRhams from case 41H-0103-R-2024 on November 8, 2024.[2] (Case 41H-0103-R-2024, Doc. 14.00). Ashe later conveyed a portion of his interest to Douglas. (Doc. 1.00, Ex. G).

In addition to the documents providing evidence of the conveyances, the Douglas motion also provides evidence that while the DeRhams owned the property they sold a parcel in 1985 to Richard Morse and Karla Mertens and reserved the water rights. (Doc. 1.00, Ex. B). Based on this reservation, the Douglas motion asks the Court to reduce the place of use by ten acres, which reflects the portion of the place of use conveyed to Morse and Mertens with the water rights reserved.

No one filed any response or otherwise objected to the Douglas motion.

DISCUSSION

Water rights in Montana may be co-owned by multiple parties. Sometimes water right co-owners do not jointly own the land to which the water rights are appurtenant. Co-ownership may result when a property, previously owned by a single party, is subdivided into multiple tracts with separate owners. That situation exists for the water right claims in this case.

When multiple parties co-own water right claims, the Water Court may split ownership of the claims between the co-owners, either upon their request or on the Court's own initiative. Rule 26, W.R.Adj.R. A split order does not change the cumulative elements of a water right claim unless the request is accompanied by a motion to amend the claim. Here, the motion provides the requisite evidence to prove the cumulative place of use should be amended by reducing it by ten acres. Otherwise, the requested split accurately reflects the ownership of the underlying place of use and the proportions of the appurtenant water rights. The Douglas motion provides evidence to split the claims, with the cumulative place of use reduced from 205.00 acres to 195.00 acres for each set of

[2] The DeRhams were not dismissed from case 41H 103726-00 because it closed prior to the conveyances.

claims. The flow rates for the split claims have been converted to gallons per minute for flow rates less than 1.0 cubic feet per second, following the standard protocol set forth in Rule 4(b)(1), W.R.C.E.R.

ORDER

Therefore, it is ORDERED, that the request to split claims 41H 103725-00 and 41H 103726-00 as provided in this Order is GRANTED. New claims 41H 30177056, 41H 30177059, 41H 30177062, and 41H 30177063 are authorized and this case is CLOSED.

Post-decree abstracts of the claims are included with this Order to confirm the modifications to claims 41H 103725-00 and 41H 103726-00 and the creation of claims 41H 30177056, 41H 30177059, 41H 30177062, and 41H 30177063 have been made in the State's centralized water rights database records.

Service via USPS Mail

Brian J. Ashe
394 Deer Spring Ln
Bozeman, MT 59718-8290

Axtell Properties LLC
13255 Axtell Gateway Rd
Gallatin Gateway, MT 59730

Service via Electronic Mail

Kellie A. Morton
Berg Lilly P.C.
kelliemorton@berglawfirm.com
(Attorney for Janita Douglas; Meyrick Douglas; Oscar Douglas)

Electronically Signed By:
Hon. Judge Stephen R Brown
Mon, Oct 19 2026 09:01:02 AM