

Montana Water Court
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ELECTRONICALLY FILED

41H-0424-R-2022

July 6, 2022

Montana Water Court

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

CLAIMANTS: Elaine F. Atkins; John P. Atkins; June Family
Trust; Karl J. Ottenstein Trust

CASE 41H-0424-R-2022
41H 101120-00
41H 30153502
41H 30153503

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Pursuant to Water Right Adjudication Rule 23, written objections to a Master's Report must be filed within **10 days** of the date the Report was filed. If this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this 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

On September 20, 2018, Ben Davis of the Montana Department of Natural Resources and Conservation (“DNRC”) Bozeman Regional Office filed a memorandum with the Montana Water Court, which included a Form 641 DNRC Ownership Update Divided Interest (“641 Form”) for water right claim 41H 101120-00. The memorandum was received shortly before the issuance of the Preliminary Decree for the Gallatin River (Basin 41H), and the Court ordered the split request be held until after the decree was issued. Accordingly, an issue remark regarding the pending split request was placed on the claim.

The memorandum, 641 Form, and attached documentation did not provide sufficient information for the Court to accurately split the claim. The 641 Form lacked required seller signatures, the claimants did not submit a deed proving ownership of the claimed place of use, and the June Family Trust’s interest in the claim was not accounted for. On March 8, 2022, the Court consolidated claim 41H 101120-00 into case 41H-0424-R-2022 and set a filing deadline for Claimants to submit the missing documents. Elaine F. Atkins and John P. Atkins, the June Family Trust, and the Karl J. Ottenstein Trust filed their response on May 2, 2022, which included a revised 641 Form, property deeds and relevant certificates, and maps.

FINDINGS OF FACT

1. Tract 13B of Certificate of Survey (“COS”) No. 621F is owned by Atkins. The parcel transferred from Ross Richardson, bankruptcy trustee for Robert Steinmann and Big West Land Company, to John P. Atkins and Elaine F. Atkins via a grant deed on June 13, 1991, with all appurtenances. On June 14, 1991, Nancy Steinmann transferred her interest in Tract 13B of COS 621F via quitclaim deed to Elaine F. Atkins and John P. Atkins.

2. Tract 12B of COS 621I is owned by the Karl J. Ottenstein Trust. The parcel transferred from the Robert K. Jaedicke and Bette H. Jaedicke Living Trust to the Karl J. Ottenstein Trust via a warranty deed on July 1, 2015, with all appurtenances.
3. Tract 9A-1 of COS 621F is owned by the June Family Trust. The parcel transferred from William B. Campbell to the June Family Trust via warranty deed on November 12, 2015, with all appurtenances.
4. Tract 12C of 621K is owned by the Karl J. Ottenstein trust. The parcel transferred from the June Family Trust to the Karl J. Ottenstein Trust via a warranty deed on November 17, 2016, with all appurtenances.
5. Tract 9A-2 of 621K is owned by Jaime L. June and Ronald K. June II. The parcel transferred from the June Family Trust to Jaime L. June and Ronald K. June II, individuals, via a quitclaim deed on May 17, 2021, with all appurtenances.
6. The parties agree that claim 41H 101120-00 should be split proportionally according to ownership of the claimed place of use. Based on the above chains of title, revised 641 Form, and supporting documentation, two new claims should be created from parent claim 41H 101120-00.
7. From parent claim 41H 101120-00, claims 41H 30153502 and 41H 30153503 should be created. Claim 41H 101120-00 shall remain Elaine F. Atkins and John P. Atkins' portion of the original claim. Claim 41H 30153502 shall be Jaime L. June, Ronald K. June II, and the June Family Trust's portion of the original claim. Claim 41H 30153503 shall be the Karl J. Ottenstein Trust's portion of the original claim.
8. The elements of parent claim 41H 101120-00 that change with the split are:
OWNER: Elaine F. Atkins and John P. Atkins
FLOW RATE: 112 GPM
MAX AC: 27.8 acres
PLACE OF USE: SESE, Sec. 33, Twp. 2 S, Rge. 5 E
9. The elements of claim 41H 30153502 are identical to parent claim 41H 101120-00, except for the following:
OWNER: Jaime L. June, Ronald K. June II, June Family Trust

FLOW RATE: 35 GPM

MAX AC: 8.6 acres

PLACE OF USE:

1. N2NESE, Sec. 33, Twp. 2 S, Rge. 5 E (3.9 acres)
2. S2NESE, Sec. 33, Twp. 2 S, Rge. 5 E (4.7 acres)

10. The elements of claim 41H 30153503 are identical to parent claim 41H 101120-00, except for the following:

OWNER: Karl J. Ottenstein Trust

FLOW RATE: 112 GPM

MAX AC: 27.8 acres

PLACE OF USE:

1. N2NESE, Sec. 33, Twp. 2 S, Rge. 5 E (5.3 acres)
2. S2NESE, Sec. 33, Twp. 2 S, Rge. 5 E (13.1 acres)
3. SESE, Sec. 33, Twp. 2 S, Rge. 5 E (6.4 acres)
4. NESWSE, Sec. 33, Twp. 2 S, Rge. 5 E (3 acres)

11. The following information remark should be placed on claims 41H 30153502 and 41H 30153503:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41H 101120-00.

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 State 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.

3. Montana law allows water rights claimants to amend their statements of claim after the objection period in a basin closes. Motions to amend a claim are governed by Mont. Code Ann. § 85-2-233(6), which states:

(6) 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 may split a claim into separate claims at any time prior to the final decree upon request of the claimants, or on its initiative. Rule 26, W.R.Adj.R.

5. The splitting of claim 41H 101120-00 does not constitute an increase to any of the claim's elements. The split only serves to accurately reflect the current proportional ownership of the claimed place of use. As a result, the Mont. Code Ann. § 85-2-233(6) notice requirements do not apply.

6. The evidence entered into the record regarding current ownership of the claimed place of use is sufficient to accurately split parent claim 41H 101120-00 based on proportional ownership as stated in the Findings of Fact.

RECOMMENDATIONS

Based on the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified above to split claim 41H 101120-00 and correct the Preliminary Decree for Basin 41H. Post-decree abstracts of claims 41H 101120-00, 41H 30153502, and 41H 30153503 are served with this report to confirm the recommended changes have been made in the State's centralized record system.

Julia J. Nordlund
Senior Water Master

Service via USPS Mail:

John P. Atkins
Elaine F. Atkins
4265 Johnson Rd
Bozeman, MT 59715

June Family Trust
% Ronald K. II & Jaime L. June Trustees
8751 Cottonwood Rd
Bozeman, MT 59718-7810

Karl J. Trust Ottenstein
% Karl J. Trustee Ottenstein
PO Box 3084
Bozeman, MT 59772-3084

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

Water Right Number: 41H 101120-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ELAINE F ATKINS
4265 JOHNSON RD
BOZEMAN, MT 59715

JOHN P ATKINS
4265 JOHNSON RD
BOZEMAN, MT 59715

Priority Date: OCTOBER 31, 1869

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 112.00 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: 27.80

Source Name: HYALITE CREEK

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	3S	5E	GALLATIN

Period of Diversion: APRIL 10 TO NOVEMBER 10

Diversion Means: HEADGATE

Ditch Name: PLUMB DITCH

Period of Use: APRIL 10 TO NOVEMBER 10

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	27.80		SESE	33	2S	5E	GALLATIN

Total: 27.80

Remarks:

THE SPLIT CLAIMS LISTED FOLLOWING THIS STATEMENT WERE AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM. 41H 30153502, 41H 30153503.

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

Water Right Number: 41H 30153502 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners:

JAIME L JUNE
8751 COTTONWOOD RD
BOZEMAN, MT 59718 7810

RONALD K JUNE II
8751 COTTONWOOD RD
BOZEMAN, MT 59718 7810

JUNE FAMILY TRUST
%JUNE RONALD K II & JAIME L TRUSTEES
8751 COTTONWOOD RD
BOZEMAN, MT 59718 7810

Priority Date: OCTOBER 31, 1869

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 35.00 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: 8.60

Source Name: HYALITE CREEK

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	3S	5E	GALLATIN

Period of Diversion: APRIL 10 TO NOVEMBER 10

Diversion Means: HEADGATE

Ditch Name: PLUMB DITCH

Period of Use: APRIL 10 TO NOVEMBER 10

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	3.90		N2NESE	33	2S	5E	GALLATIN
2	4.70		S2NESE	33	2S	5E	GALLATIN

Total: 8.60

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41H 101120-00.

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

Water Right Number: 41H 30153503 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: OTTENSTEIN, KARL J TRUST
%OTTENSTEIN KARL J TRUSTEE
PO BOX 3084
BOZEMAN, MT 59772 3084

Priority Date: OCTOBER 31, 1869

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 112.00 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: 27.80

Source Name: HYALITE CREEK

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	3S	5E	GALLATIN

Period of Diversion: APRIL 10 TO NOVEMBER 10

Diversion Means: HEADGATE

Ditch Name: PLUMB DITCH

Period of Use: APRIL 10 TO NOVEMBER 10

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	5.30		N2NESE	33	2S	5E	GALLATIN
2	13.10		S2NESE	33	2S	5E	GALLATIN
3	6.40		SESE	33	2S	5E	GALLATIN
4	3.00		NESWSE	33	2S	5E	GALLATIN

Total: 27.80

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41H 101120-00.

Exhibit 2: Current Property Ownership Identification

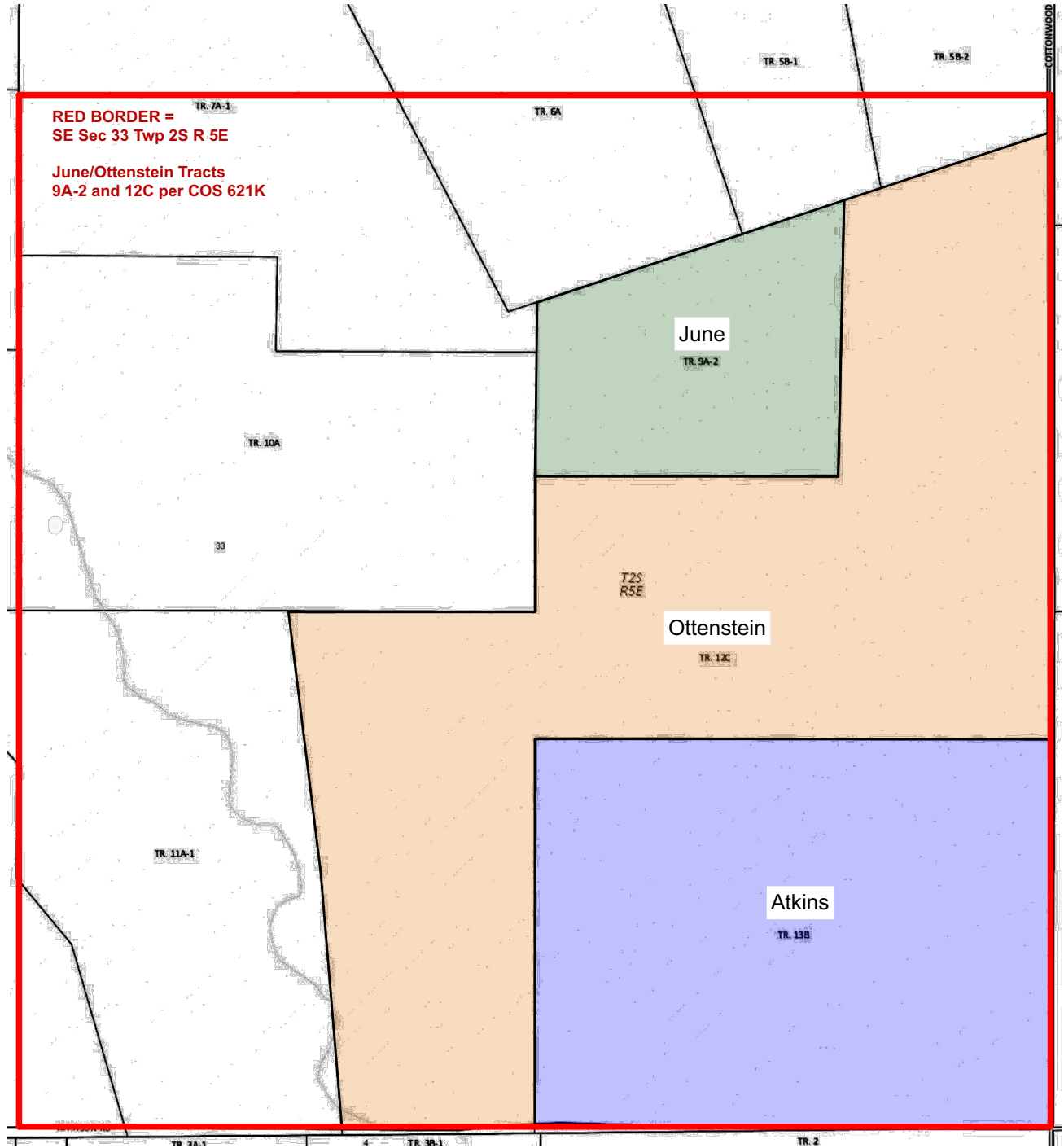


Exhibit 5: COS 621K with Non-Road Acreage Calculated

