

Montana Water Court
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ELECTRONICALLY FILED

41H-0589-R-2022

October 4, 2022

Montana Water Court

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

CLAIMANTS: East Gallatin LLC; Robert L. McIlhattan; Sharon
R. McIlhattan; Valley View Veterinary Hospital
LLC

CASE 41H-0589-R-2022
41H 9720-00
41H 139035-00

NOTICE OF INTENT TO APPEAR: Manley Meadows
Homeowners Association Inc; Thelma Manley Trust

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

Water right claims 41H 9720-00 and 41H 139035-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with issue remarks resulting from pre-decree examination by the Department of Natural Resources and Conservation (DNRC). The claims did not receive objections or counter objections. Manley Meadows Homeowners Association, Inc., and the Thelma Manley Trust filed Notices of Intent to Appear (NOIA) to claim 41H 139035-00. To resolve the issue remarks and NOIAs, the Water Court consolidated the claims into case 41H-0589-R-2022.

FINDINGS OF FACT

1. David H. Manley and Thelma J. Manley filed the Statement of Claim for claim 41H 139035-00 on April 19, 1982. The Manleys claimed a flow rate of 50 miner's inches and a volume of 240 acre-feet/year for subirrigation of 60.00 acres.
2. Claim 41H 139035-00 appeared in the Basin 41H Preliminary Decree with the following issue remarks:

THE CLAIMED PLACE OF USE AND ACRES IRRIGATED MAY BE QUESTIONABLE. REVIEW OF THE AVAILABLE DATA APPEARS TO INDICATE FEWER ACRES MAY HAVE BEEN IRRIGATED THAN HAS BEEN CLAIMED.

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

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.
3. Pursuant to § 85-2-248(5), MCA, the Water Court ordered Claimants East Gallatin LLC, Robert L. McIlhatten, Sharon R. McIlhatten, and Valley View Veterinary Hospital LLC (collectively "Claimants") to confer with the Bozeman Regional Office of the DNRC to resolve the foregoing issue remarks on claim 41H 139035-00.

4. Claimants conferred with the DNRC Bozeman Regional Office, and on July 20, 2022, East Gallatin LLC filed a Notice of Proposed Resolution with the Water Court. The Resolution proposed the following changes:
 - a. Reduce the place of use from 60.00 acres to 46.40 acres. Claimants state that although 60 acres were originally claimed, 46.40 acres is the maximum number of acres historically and currently subirrigated, as quantified by aerial and ground-level imagery submitted with the Resolution.
 - b. Remove the 240.00 acre-feet volume quantification, and replace it with an information remark stating that no volume has been decreed for use of natural subirrigation, pursuant to Sections VII.C and VII.C.3.C of the DNRC Claims Examination Manual. The foregoing DNRC guidelines provide that a volume will not be decreed for direct flow irrigation rights.
 - c. Change the source name from “Waste & Seepage, Unnamed Tributary of East Gallatin River” to “Subirrigation, Unnamed Tributary of East Gallatin River.” Claimants state that DNRC incorrectly changed the source from subirrigation, as listed on the original Statement of Claim, to waste and seepage during claim examination in 1983.
5. On August 31, 2022, DNRC Water Resources Specialist Kara Huyser filed a Memorandum of Claimants’ conference with the department. The Memorandum supports the changes requested in East Gallatin LLC’s Proposed Resolution.
6. The Water Court accepts Claimant East Gallatin LLC’s Proposed Resolution and the following changes can be made to claim 41H 139035-00
 - a. Volume: **NO VOLUME HAS BEEN DECREED FOR THIS USE OF NATURAL SUBIRRIGATION.**
 - b. Maximum Acres: **46.40**
 - c. Source Name: **SUBIRRIGATION, UNNAMED TRIBUTARY OF EAST GALLATIN RIVER**
 - d. Place of Use:
 - i. POD ID No. 1 Acres: **46.40**

ii. Total Acres: **46.40**

7. On June 30, 2022, East Gallatin LLC filed a Notice of Claim Status withdrawing its interest in claim 41H 9720-00. This Notice was not served on the other parties, and was included in DNRC's Memorandum.
8. Claim 41H 9720-00 appeared with an issue remark stating that DNRC modified the source name during pre-decree review. The purpose of this issue remark is to provide other water users notice of the modification. No objections, counterobjections, or NOIAs were filed. The issue remark served its purpose and can be removed.
9. On September 16, 2022, Thelma Manley Trust and Manley Meadows Homeowners Association, Inc. filed withdrawals of the parties' NOIAs, conditional upon the above changes to claim 41H 139035-00.

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 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.
3. The Water Court promotes the resolution of objections and issue remarks through settlement. Rule 16(a), W.R.Adj.R. However, the Court is not bound by settlement agreements. Any settlement reached by the parties is subject to review and approval by the Court. Rule 17(a), W.R.Adj.R.
4. The claimant of a water right may waive the advantage of § 85-2-227, MCA. If a claimant agrees to reduce or limit an element of a claim, the Water Court does not need to determine whether the burden of proof has been met and may accept the

reduction or limitation without further presentation of evidence, unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

5. East Gallatin LLC's interest in claim 41H 9720-00 is withdrawn.
6. Claimants the advantage of § 85-2-227, MCA, by agreeing to reduce the maximum number of subirrigated acres of claim 41H 139035-00. There are no unresolved issue remarks on the claim, the NOIAs are withdrawn, and the Water Court accepts the reduction without the presentation of further evidence.
7. Information in the record, East Gallatin LLC's Proposed Resolution, and DNRC's Memorandum is sufficient to resolve the issue remarks on claims 41H 9720-00 and 41H 139035-00.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the Water Court make the above-specified changes to claims 41H 9720-00 and 41H 139035-00. Post decree abstracts of the claims accompany this Report to confirm the changes have been made in the State's centralized water right record system.

Julia J. Nordlund
Senior Water Master

Service via USPS Mail:

East Gallatin LLC
1320 Manley Rd
Bozeman, MT 59715-8779

Robert L. McIlhattan
Sharon R. McIlhattan
1700 Manley Rd
Bozeman, MT 59715-9383

Valley View Veterinary Hospital LLC
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 9720-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

ROBERT L MCILHATTAN
1700 MANLEY RD
BOZEMAN, MT 59715 9383

VALLEY VIEW VETERINARY HOSPITAL LLC
2717 MCILHATTAN ROAD
BOZEMAN, MT 59715

SHARON R MCILHATTAN
1700 MANLEY RD
BOZEMAN, MT 59715 9383

Priority Date: JANUARY 1, 1900

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 2.00 AC-FT

Households: 1

Maximum Acres: 1.00

Source Name: SPRING, UNNAMED TRIBUTARY OF CHURN 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		SWNWSE	30	1S	6E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

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	1.00		SWNESW	30	1S	6E	GALLATIN

Total: 1.00

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

Water Right Number: 41H 139035-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: EAST GALLATIN LLC
 1320 MANLEY RD
 BOZEMAN, MT 59715 8779

Priority Date: DECEMBER 31, 1930

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: NO VOLUME HAS BEEN DECREED FOR THIS USE OF NATURAL SUBIRRIGATION.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 46.60

Source Name: SUBIRRIGATION, UNNAMED TRIBUTARY OF EAST GALLATIN RIVER
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		E2NE	36	1S	5E	GALLATIN

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: SUBIRRIGATION

Period of Use: MAY 1 TO OCTOBER 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	46.60		E2NE	36	1S	5E	GALLATIN
Total:	46.60						

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.

139032-00

139035-00