

Montana Water Court
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ELECTRONICALLY FILED

41H-0636-R-2022

October 26, 2022

Montana Water Court

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

CLAIMANT: Goering Hofer Revocable Trust

NOTICE OF INTENT TO APPEAR: John D. Goering

CASE 41H-0636-R-2022
41H 9955-00

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 claim 41H 9955-00 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 claim also received a Notice of Intent to Appear ("NOIA") from John D. Goering, trustee of the Goering Hofer Revocable Trust. To resolve the issue remarks, the Water Court consolidated the claim into case 41H-0636-R-2022.

FINDINGS OF FACT

1. Claim 41H 9955-00 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 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.
2. Pursuant to § 85-2-248(5), MCA the Water Court ordered claimant Goering Hofer Revocable Trust ("Goering Hofer Trust") to confer with the Bozeman Regional Office of the DNRC by August 8, 2022, to resolve the foregoing issue remarks on claim 41H 9955-00.
3. John D. Goering conferred with DNRC on behalf of the Goering Hofer Trust, and on October 7, 2022, DNRC Water Resources Specialist Kara Huyser filed a memorandum discussing the results of the conference with the Water Court. The Memorandum states that DNRC and Goering reviewed claim file information and

historical data, and agree upon the following changes to resolve the issue remarks on claim 41H 9955-00:

- a. Remove the place of use and acres irrigated issue remark from the claim. Field notes from 1952 and Water Resources Survey aerial imagery from 1979 confirm the claimed 18.00 acres irrigated.
 - b. Remove the flow rate issue remark. The claimed 305.00 GPM flow rate across the 18.00-acres irrigated is 16.99 GPM/AC, which is below DNRC guidelines of 17.00 GPM/AC.
 - c. Remove the volume issue remark. The volume quantification was already removed by the Water Court pursuant to Rule 15(c), W.R.C.E.R.
4. The Water Court can accept the foregoing changes agreed upon by DNRC and Goering. The changes resolve the issue remarks, and the remarks can be removed.

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 must resolve all issue remarks not resolved through the objection process. Section 85-2-248(2), MCA. The Court has authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.
4. When resolving issue remarks, the Water Court must weigh the issue remark and the information resulting in the issue remark against the claimed water right. Section 85-2-247(2), MCA. The Court is permitted to use information submitted by DNRC, the

Statement of Claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

5. There is sufficient evidence in the claim file and DNRC Memorandum for the Water Court to resolve the issue remarks on claim 41H 9955-00.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the Water Court make the above-specified changes to 41H 9955-00. A Post Decree Abstract of Water Right Claim accompanies 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:

Goering Hofer Revocable Trust
% John D. Goering/ Petrea J. Hofer Trustees
8393 Saddle Mountain Rd
Bozeman, MT 59715

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

Water Right Number: 41H 9955-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GOERING HOFER REVOCABLE TRUST
 % GOERING, JOHN D/HOFER, PETREA J TRUSTEES
 8393 SADDLE MOUNTAIN RD
 BOZEMAN, MT 59715

Priority Date: JULY 11, 1951

Type of Historical Right: FILED

Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER

Flow Rate: 305.00 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: 18.00

Source Name: WATTS 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		SENE	8	1S	6E	GALLATIN

Period of Diversion: JUNE 1 TO SEPTEMBER 1

Diversion Means: HEADGATE

Ditch Name: GOERING DITCH

Period of Use: JUNE 1 TO SEPTEMBER 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	18.00		W2NE	8	1S	6E	GALLATIN
Total:	18.00						

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.

9954-00

9955-00