

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

* * * * *

CLAIMANT: Leach Rachelle Issacs 2011 Trust

OBJECTOR: Blackwood Dry Creek LP

CASE 41H-0173-R-2021

41H 33070-00

41H 33078-00

41H 33083-00

41H 33084-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court. 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, conclusion 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

INTRODUCTION

Water rights claims 41H 33070-00, 41H 33078-00, 41H 33083-00, and 41H 33084-00, owned by Isaacs, Leah Rachelle 2011 Trust, appeared in the Preliminary Decree for the

Gallatin River (Basin 41H) with an issue remark stating: “THE CLAIMS LISTED AT THE END OF THIS STATEMENT CLAIM THE SAME NOTICE OF APPROPRIATION. THE CLAIMED NOTICE OF APPROPRIATION DOES NOT SPECIFY A FLOW RATE.”

On May 8, 2019, Blackwood Dry Creek LP, through counsel Breeann Johnson, filed an objection to all elements of water rights claims 41H 33078-00 and 41H 33084-00.

On June 22, 2020, Jeremy Michael filed a Notice of Appearance for Leah Rachelle Isaacs 2011 Trust with the court.

The Water Court consolidated water rights claims 41H 33070-00, 41H 33078-00, 41H 33083-00, and 41H 33084-00 into Water Court case 41H-0173-R-2020, and set filing deadlines for the parties to file settlement documents with the court. On December 9, 2021, the parties filed a Stipulation Settling Claims with the court resolving the issues.

The Water Court presently resolves the issue in this case.

ISSUES

1. *Whether the Water Court approves the Stipulation Settling Claims filed by the parties.*

APPLICABLE LAW

“The Montana [W]ater [C]ourt has a statutory obligation and the exclusive authority to adjudicate claims of existing water rights.” Rule 1(a), W.R.Adj.R. The Water Court resolves issue remarks before issuance of a final decree and may use information submitted by the DNRC, the statement of claim, and any other data obtained by the court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

After the Water Court issues a preliminary decree in a basin, an objection period provides parties with an ownership interest in water or its use the opportunity to raise issues regarding their own water rights or other water rights in the preliminary decree. Section 85-2-233(1)(b); *Mont. Trout Unlimited v. Beaverhead Water Co.*, 2011 MT 151, ¶ 33, 361 Mont. 77, 255 P.3d 179.

A properly filed statement of claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. 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, 357 Mont. 438, 240 P.3d 628. The party seeking to overcome the prima facie status of a statement of claim bears the burden of proof. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

In Water Court proceedings, the parties may file settlements stipulating the terms under which the parties contractually agree to resolve decree objections. A settlement may include a claimant’s legally binding commitment to modify water right claims to resolve objections and issue remarks and an objector’s agreement to withdraw objections conditioned upon the court’s acceptance of the claim modifications. *E.g., In re Pondera Cty. Canal & Reservoir Co.*, Case 41M-202, 2020 Mont. Water LEXIS 19 (Jan. 9, 2020).

Settlement agreements do not bind the Water Court and are subject to the court’s review and approval. Rule 17(a), W.R.Adj.R. The court may rely on the stipulated facts and agreements of a settlement that are “not contrary to law, court rule, or public policy.” *In re Marriage of Hill*, 265 Mont. 52, 58, 874 P.2d 705, 708 (1994). When a stipulation proposes modifications to water right claim elements, the court must evaluate each proposed modification to ensure the modification is supported by the evidence and within the court’s authority to adjudicate. *In re Argabright*, Case 41I-265, 2014 Mont. Water LEXIS 9, (December 12, 2014) (affirming rejection of stipulation); *In re Dana Ranch Co.*, Case 41J-265, 2017 Mont. Water LEXIS 13 (rejecting stipulation). The water right adjudication rules require settlement agreements enlarging an element of a water right to meet the applicable burden of proof. Rule 17(b), W.R.Adj.R. The rules do not require settlement agreements reducing an element of a water right to meet the applicable burden of proof. Rule 17(c), W.R.Adj.R.

DISCUSSION

1. *Whether the Water Court approves the Stipulation Settling Claims filed by the parties.*

The consolidated water rights claims are filed multiple-use rights—claims 41H 33070-00 (direct stock) and 41H 33083-00 (flood-irrigation) and claims 41H 33078-00 (direct stock) and 41H 33084-00 (flood-irrigation). The preliminary decree abstracts indicate the claims are for groundwater from a spring hydrologically related to an unnamed

tributary of Hyalite Creek in Gallatin County, Montana. The water rights claims received issue remarks stating: “THE CLAIMS LISTED AT THE END OF THIS STATEMENT CLAIM THE SAME NOTICE OF APPROPRIATION. THE CLAIMED NOTICE OF APPROPRIATION DOES NOT SPECIFY A FLOW RATE.”

The Stipulation Settling Claims states the “issue remark is incorrect”; the water rights claims are based on separate July 1, 1922, notices of appropriation filed by Mollie E. Elliot attached to the stipulation. Water rights claims 41H 33070-00 (direct stock) and 41H 33083-00 (flood-irrigation) claim a spring and seepage arising in the NWSW of Section 20, Township 2S, Range 5E, Gallatin County. Water rights claims 41H 33078-00 (direct stock) and 41H 33084-00 (flood-irrigation) claim a different spring and seepage arising in the NWNW of Section 29, Township 2S, Range 5E, Gallatin County. Indeed, the filed notices of appropriation are distinct and separate. The Water Court removes the resolved issue remarks relating to the filed notices of appropriation.

Furthermore, the Stipulation Settling Claims states the source for water rights claims 41H 33078-00 and 41H 33084-00 is commonly referred to as Foster Spring Creek. Blackwood owns an interest in other water rights claims—41H 126848-00, 41H 126855-00, and 41H 126858-00—utilizing water from Foster Spring Creek. DNRC has standardized the source for these water rights claims as surface water from an undeveloped spring hydrologically related to an Unnamed Tributary of South Dry Creek.¹ To resolve the issue remarks consistent with accurate historical use, Blackwood asks the court to correct the source for water rights claims 41H 33078-00 and 41H 33084-00 from groundwater from a spring hydrologically related to an unnamed tributary of Hyalite Creek to surface water from a spring hydrologically related to an unnamed tributary of South Dry Creek. Furthermore, Blackwood’s objections regarding the source for water rights claims 41H 33078-00 and 41H 33084-00 state the: “Source appears incorrect and should be corrected to UT South Dry Creek.”

The Stipulation Settling Claims further recommends modifications to the point-of-diversion and place-of-use elements for water right claim 41H 33078-00 and the point-of-

¹ According to DNRC claims examination standards, undeveloped springs are classified as surface water. 2013 DNRC Claims Examination Manual, Section II, p. 41.

diversion, place-of-use, total maximum acres, and flow rate elements for water right claim 41H 33084-00. The stipulation states:

[B]ased on current and historical aerial imagery and USGS topographic maps, Foster Spring is located near the upstream end of the natural channel referred to as Foster Spring Creek. Current and historic aerial imagery indicate that the only diversion from Foster Spring Creek serving the Isaacs property is a headgate and ditch diverting in the SENESE of Section 19, T2S R5E, and conveying water across the Blackwood property to the Isaacs property in the SENE of Section 19 and the SWNW of Section 20, T2S R5E. Based on the original statement of claim and claim file map, it appears that the claimant intended to claim stock drinking directly from Foster Spring Creek on the Isaacs property, as well as diversionary stock use from the section of ditch from Foster Spring Creek on the Isaacs property.

Thus, the parties stipulate the means of diversion and point of diversion for water rights claims 41H 33078-00 and 41H 33084-00 should be corrected from a ditch in the NWNWNW of Section 29, Township 2S, Range 5E, Gallatin County, to a headgate in the SENESE Section of 19, Township 2S, Range 5E, Gallatin County, and additional points of diversion should be added to the decree abstract for water right claim 41H 33078-00 to reflect year-round stock-use direct from the source in the W2SWSW of Section 20, Township 2S, Range 5E, Gallatin County, and in the SESENE of Section 19, Township 2S, Range 5E, Gallatin County.

The stipulation further states the legal land description for Place of Use ID No. 2 associated with water right claim 41H 33078-00 should be corrected from the W2SW of Section 20, to the W2SWSW of Section 20, Township 2S, Range 5E, Gallatin County. The parties attached a map showing the historical points of diversion and place of use.

Finally, the stipulation, consistent with Blackwood's objection, states:

The flow rate for [water right claim 41H 33084-00] of 100 MI [2.50 cubic-feet-per-second (CFS)] was memorialized in a Ditch Right and Water Right Agreement dated January 3, 1964, entered into by the predecessors to Isaacs and Blackwood. This agreement is attached as **Exhibit D**. The flow rate for this claim should be changed to reflect the 1964 agreement. The point of diversion should be changed to reflect the Isaacs headgate located in the SENESE of Section 19, T2S R5E, as described above in relation to claim 41H 33078-00.

Finally, the claimed 160-acre place of use cannot be fully served by the historical ditch system on the property. *See* Exhibit C. The place of use

should be reduced to 37.1 acres to reflect the historically flood-irrigable area served by the water right.

The parties therefore stipulate the flow rate for water right claim 41H 33084-00 should be reduced to 2.5 CFS and the total maximum acres should be reduced to 37.1 acres, consistent with accurate historical use.

Based on the court's review, the Stipulation Settling Claims is not contrary to law, court rule, or public policy. The Stipulation Settling Claims does not propose modifications enlarging any element of the water rights claims. Rather, evidence in the record supports that the modifications are consistent with historical on the ground use of the water rights claims. The Water Court approves the Stipulation Settling Claims filed by the parties and modifies elements of the water rights claims consistent with the filed stipulation. Approval of the Stipulation Settling Claims resolves the filed objections and issue remarks.

RECOMMENDATIONS

This Water Master recommends the Water Court to: (1) remove the resolved issue remarks; (2) correct the source for water rights claims 41H 33078-00 and 41H 33084-00 from groundwater from a spring hydrologically related to an unnamed tributary of Hyalite Creek to **surface water** from a **spring hydrologically related to an unnamed tributary of South Dry Creek**; (3) correct the legal land description identifying Place of Use ID No. 2 for water right claim 41H 33078-00 from the W2SW of Section 20, to the **W2SWSW of Section 20, Township 2S, Range 5E, Gallatin County**; (4) correct the means of diversion from ditch to **headgate** and the legal land description identifying Point of Diversion ID No. 1 for water rights claims 41H 33078-00 and 41H 33084-00 from the NWNWNW of Section 29, to the **SENESE of Section 19, Township 2S, Range 5E, Gallatin County**; (5) add additional points of diversion reflecting **year-round** stock-use **direct from the source** for water right claim 41H 33078-00 in the **W2SWSW of Section 20, Township 2S, Range 5E, Gallatin County**, and in the **SESENE of Section 19, Township 2S, Range 5E, Gallatin County**; (6) reduce the flow rate for water right claim 41H 33084-00 from 6.06 CFS to **2.5 CFS**; (7) reduce the maximum acres and modify the place of use from 160 acres to **37.1 acres**—**36.67** acres in the **SENE** of Section 19, Township 2S, Range 5E,

Gallatin County (Place of Use ID No. 1), and .43 acres in the NWSWNW of Section 20, Township 2S, Range 5E, Gallatin County (Place of Use ID No. 2).

The Water Court attaches post-decree abstracts for the water rights claims to this Master's Report, as well as the Stipulation Settling Claims filed by the parties.

Kirsa Shelkey
Water Master
she/her/hers

Service Via Electronic Mail:

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

Water Right Number: **41H 33070-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ISAACS, LEAH RACHELLE 2011 TRUST
DAVID ISAACS TRUSTEE
PO BOX 456
CANADIAN, TX 79014 0456

Priority Date: JULY 1, 1922

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 25.00 GPM

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF HYALITE 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		NENWSW	20	2S	5E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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			SWNW	20	2S	5E	GALLATIN
2			NWSW	20	2S	5E	GALLATIN

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

33070-00 33083-00

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

Water Right Number: 41H 33078-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ISAACS, LEAH RACHELLE 2011 TRUST
DAVID ISAACS TRUSTEE
PO BOX 456
CANADIAN, TX 79014 0456

Priority Date: JULY 1, 1922

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF SOUTH DRY 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		SENESE	19	2S	5E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

2		W2SWSW	20	2S	5E	GALLATIN
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3		SESENE	19	2S	5E	GALLATIN
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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			SENE	19	2S	5E	GALLATIN
2			W2SWSW	20	2S	5E	GALLATIN

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

33078-00

33084-00

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

Water Right Number: 41H 33083-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ISAACS, LEAH RACHELLE 2011 TRUST
DAVID ISAACS TRUSTEE
PO BOX 456
CANADIAN, TX 79014 0456

Priority Date: JULY 1, 1922

Type of Historical Right: FILED

Purpose (Use): IRRIGATION
Irrigation Type: FLOOD

Flow Rate: 4.55 CFS

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: 120.00

Source Name: SPRING, UNNAMED TRIBUTARY OF HYALITE 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		NENWSW	20	2S	5E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: DITCH

Ditch Name: WALKER DITCH

Period of Use: APRIL 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	40.00		SENE	19	2S	5E	GALLATIN
2	40.00		SWNW	20	2S	5E	GALLATIN
3	40.00		NWSW	20	2S	5E	GALLATIN

Total: 120.00

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.

33081-00

33082-00

33083-00

33084-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

33070-00

33083-00

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

Water Right Number: 41H 33084-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ISAACS, LEAH RACHELLE 2011 TRUST
DAVID ISAACS TRUSTEE
PO BOX 456
CANADIAN, TX 79014 0456

Priority Date: JULY 1, 1922

Type of Historical Right: FILED

Purpose (Use): IRRIGATION
Irrigation Type: FLOOD

Flow Rate: 2.50 CFS

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: 37.10

Source Name: UNNAMED TRIBUTARY OF SOUTH DRY 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		SENESE	19	2S	5E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Period of Use: APRIL 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	36.67		SENE	19	2S	5E	GALLATIN
2	0.43		NWSWNW	20	2S	5E	GALLATIN
Total:	37.10						

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.

33081-00 33082-00 33083-00 33084-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

33078-00

33084-00

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41H-0173-R-2021

December 9, 2021

Montana Water Court

Attorneys for Blackwood Dry Creek, LP

**MONTANA WATER COURT, UPPER MISSOURI DIVISION
GALLATIN RIVER
BASIN 41H**

CLAIMANT:	Leah Rachelle Isaacs 2011 Trust	CASE 41H-0173-R-2021
OBJECTOR:	Blackwood Dry Creek LP	41H 33070-00
		41H 33078-00
		41H 33083-00
		41H 33084-00

STIPULATION SETTLING CLAIMS

This Stipulation is entered by Claimant, Leah Rachelle Isaacs 2011 Trust ("Isaacs"), and Objector, Blackwood Dry Creek LP ("Blackwood") (collectively the Parties), by and through their undersigned attorneys.

RECITALS

- A. Pursuant to Mont. Code Ann. § 85-2-221, Isaacs' predecessor-in-interest properly filed statements of claim for water right Claim Nos. 41H 33070-00, 41H 33078-00, 41H 33083-00, and 41H 33084-00 with the Department of Natural Resources and Conservation ("DNRC").
- B. Pursuant to Mont. Code Ann. § 85-2-233, Blackwood timely filed Objections to Claim Nos. 41H 33078-00 and 41H 33084-00.

- C. **Claim 41H 33070-00** is a filed right for stock drinking directly from the source.

This claim, along with the other three claims consolidated in this matter, received a DNRC issue remark stating that all four claims claim the same Notice of Appropriation (“NOA”), and the NOA did not specify a flow rate. The DNRC issue remark is incorrect. This claim is based on a July 1, 1922 NOA by Mollie E. Elliott for a spring and seepage arising in the NWSW of Section 20. The NOA is attached hereto as **Exhibit A**.

- D. **Claim 41H 33078-00** is a filed right for stock drinking from a diversion. This claim, along with the other three claims consolidated in this matter, received a DNRC issue remark stating that all four claims claim the same NOA, and the NOA did not specify a flow rate. The DNRC issue remark is incorrect. This claim is based on a different July 1, 1922 NOA by Mollie E. Elliott for a spring and seepage arising in the NWNW of Section 29. The NOA is attached hereto as **Exhibit B**.

The source located in the NWNW of Section 29 is commonly known as Foster Spring Creek. Other claims associated with this source, are classified by DNRC as from an Unnamed Tributary of South Dry Creek.¹ The source for this claim should be corrected to an Unnamed Tributary of South Dry Creek so that all claims from this source are named consistently. Further, there is no evidence in the claim file supporting development of Foster Spring.² The source for this claim should be further refined to surface water.

¹ Blackwood holds claims 41H 126848-00, 41H 126855-00, and 41H 126858-00 from Foster Spring Creek and all are coded as from an “Unnamed Tributary of South Dry Creek.”

² According to DNRC claims examination standards, undeveloped springs are classified as surface water. 2013 DNRC Claims Examination Manual, Section II, p. 41.

Additionally, based on current and historical aerial imagery and USGS topographic maps, Foster Spring is located near the upstream end of the natural channel referred to as Foster Spring Creek. Current and historic aerial imagery indicate that the only diversion from Foster Spring Creek serving the Isaacs property is a headgate and ditch diverting in the SENESE of Section 19, T2S R5E, and conveying water across the Blackwood property to the Isaacs property in the SENE of Section 19 and the SWNW of Section 20, T2S R5E. Based on the original statement of claim and claim file map, it appears that the claimant intended to claim stock drinking directly from Foster Spring Creek on the Isaacs property, as well as diversionary stock use from the section of ditch from Foster Spring Creek on the Isaacs property. A map showing the historical points of diversion and use is attached as **Exhibit C**.

- E. **Claim 41H 33083-00** is a filed right for flood irrigation. This claim, along with the other three claims consolidated in this matter, received a DNRC issue remark stating that all four claims claim the same NOA, and the NOA did not specify a flow rate. The DNRC issue remark is incorrect. This claim is based on a July 1, 1922 NOA by Mollie E. Elliott for a spring and seepage arising in the NWSW of Section 20. *See Exhibit A.*
- F. **Claim 41H 33084-00** is a filed right for flood irrigation. This claim, along with the other three claims consolidated in this matter, received a DNRC issue remark stating that all four claims claim the same NOA, and the NOA did not specify a flow rate. The DNRC issue remark is incorrect. This claim is based on a different July 1, 1922

NOA by Mollie E. Elliott for a spring and seepage arising in the NWNW of Section 29.
See Exhibit B.

The flow rate for this claim of 100 MI (2.50 cfs) was memorialized in a Ditch Right and Water Right Agreement dated January 3, 1964, entered into by the predecessors to Isaacs and Blackwood. This agreement is attached as **Exhibit D**. The flow rate for this claim should be changed to reflect the 1964 agreement.

The point of diversion should be changed to reflect the Isaacs headgate located in the SENESE of Section 19, T2S R5E, as described above in relation to claim 41H 33078-00.

Finally, the claimed 160-acre place of use cannot be fully served by the historical ditch system on the property. *See* Exhibit C. The place of use should be reduced to 37.1 acres to reflect the historically flood-irrigable area served by the water right.

- G. In the interest of resolving this case without the need for further litigation, the Parties have executed this Stipulation to resolve their objections, counterobjections, and appearances.

AGREEMENT

The Parties, by and through their undersigned attorneys, hereby stipulate and agree that the following changes should be made to the above-described water rights:

1. **Claim 41H 33070-00** should be changed as follows:
 - a. The DNRC issue remark should be removed from the claim.
 - b. All other elements of this claim will remain as they appear in the Preliminary Decree.

Exhibit E is a map showing the place of use and point of diversion for this claim.

2. **Claim 41H 33078-00** should be changed as follows:

- a. The Source Name should be an “Unnamed Tributary of South Dry Creek;”
- b. The Source Type should be “Surface Water;”
- c. There should be three points of diversion for this claim, described as follows:

ID	QTRSEC	SEC	TWP	RGE	COUNTY
1	NWNWNW SENESE	29 19	2S	5E	GALLATIN
Diversion Means: Ditch HEADGATE					
2	W2SWSW	20	2S	5E	GALLATIN
Period of Diversion:		JANUARY 1 – DECEMBER 31			
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE			
3	SESENE	19	2S	5E	GALLATIN
Period of Diversion:		JANUARY 1 – DECEMBER 31			
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE			

- d. The quarter section legal description for the place of use ID# 2 should be corrected to the **W2SWSW**;
- e. The DNRC issue remark should be removed from the claim.
- f. All other elements of this claim will remain as they appear in the Preliminary Decree.

Exhibit F is the proposed revised abstract for this Claim; **Exhibit C** is a map showing the points of diversion and place of use for this Claim.

3. **Claim 41H 33083-00** should be changed as follows:

- a. The DNRC issue remark should be removed from the claim.
- b. All other elements of this claim will remain as they appear in the Preliminary Decree.

Exhibit E is a map showing the place of use and point of diversion for this claim.

4. **Claim 41H 33084-00** should be changed as follows:

- a. The Flow Rate should be reduced to 2.50 cfs;
- b. The Maximum Acres should be reduced to 37.1 acres;
- c. The Source Name should be an “Unnamed Tributary of South Dry Creek;”
- d. The Source Type should be “Surface Water;”
- e. The point of diversion for this claim should be refined as follows:

ID	QTRSEC	SEC	TWP	RGE	COUNTY
1	NWNWNW SENESE	29 19	2S	5E	GALLATIN

- f. The place of use description should be refined as follows:

ID	ACRES	QTRSEC	SEC	TWP	RGE	COUNTY
1	36.67	SENE	19	2S	5E	GALLATIN
2	0.43	NWSWNW	20	2S	5E	GALLATIN
TOTAL: 37.1						

- g. The DNRC issue remark should be removed from the claim.
- h. All other elements of this claim will remain as they appear in the Preliminary Decree.

Exhibit G is the proposed revised abstract for this Claim; **Exhibit C** is a map showing the points of diversion and place of use for this Claim.

- 5. Upon the Montana Water Court’s acceptance and entry of this Stipulation, the objections of the Parties, shall be deemed resolved and withdrawn.
- 6. The Parties agree that the changes to the claims consolidated into this matter, as specified above, are legally and factually warranted, and should be reflected in the entry of the Final Decree for Basin 41H.

7. Each party asserts that it entered into and executed this Stipulation voluntarily, in good faith, and without any fraud, misunderstanding, misrepresentation, overreaching, duress, or undue influence whatsoever.
8. Each party agrees to bear its own costs and attorney fees arising from the negotiation and execution of this Stipulation and in proceedings before the Montana Water Court regarding Case 41H-0173-R-2021.
9. This Stipulation is binding on the heirs, successors and assigns, representatives, and agents of the parties.
10. The parties hereto represent and affirm the signatories to this Stipulation are legally authorized to bind the parties in this matter.
11. This Stipulation may be signed in counterparts. Facsimile or electronic copies of signatures will be deemed the equivalent of original signatures.



BILLIE BLACKWOOD, MANAGING PARTNER
BLACKWOOD DRY CREEK, LP

11-18-2021

DATE



BREEANN M. JOHNSON
WESTERN ROOTS LAW PLLC
PO BOX 7004
BOZEMAN, MT 59771

11-29-2021

DATE

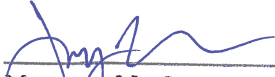
Approved as to Form
Attorney for Blackwood Dry Creek, LP



DAVID ISAACS, TRUSTEE
LEAH RACHELLE ISAACS 2011 TRUST

11-12-2021

DATE



MICHAEL J.L. CUSICK
JEREMY A. MICHAEL
CUSICK, FARVE, MATTICK & REFLING, P.C.
PO Box 1288
BOZEMAN, MT 59771-1288
OFFICE@CMRLAWMT.COM

11/15/21

DATE

Approved as to Form

Attorney for Leah Rachelle Isaacs 2011 Trust

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of December, 2021, a true and correct copy of the foregoing document was served upon the following parties in the manner set forth below:

Montana Water Court PO Box 1389 Bozeman, MT 59771-1389 406.586.4364	<input type="checkbox"/> U.S. First-Class Mail, Postage Prepaid X Email: watercourt@mt.gov <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:
Michael J.L. Cusick Jeremy A. Michael Cusick, Farve, Mattick & Refling, P.C. PO Box 1288 Bozeman, MT 59771-1288	<input type="checkbox"/> U.S. First-Class Mail, Postage Prepaid X Email: office@cmrlawmt.com <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:

/s/ Breeann M. Johnson

Breeann M. Johnson

NOTICE OF WATER RIGHT.

STATE OF MONTANA, }
COUNTY OF GALLATIN. } ss.

To All Whom these Presents may Concern:

Be it Known, That *I, Mollie E. Elliott,*

of *_____* said County

and State, do hereby publish and declare, as a legal notice to all the world:

I. That *I* have legal right to the use, possession and control of, and claim *All of The* inches of the waters of *Certain Springs and Seepage Waters arising on the N.W. 1/4 of S.W. 1/4 of Section 20, in Twp 2 S R. 5 E.* in said County and State, for irrigating and other purposes.

II. That the special purpose for which said water is intended to be used, and the place of intended use, is *The Southeast Quarter of the Northeast Quarter (S.E. 1/4 of N.E. 1/4) of Section Nineteen (19), and the South-half of the Northwest Quarter (S. 1/2 of N.W. 1/4) and the West-Half of the Southwest Quarter (W. 1/2 of S.W. 1/4 of Section Twenty (20), all in Township Two (2) South, Range Five (5) East of the Montana Principal Meridian, in Gallatin County, State of Montana.*

III. That *I* have taken said water out of and diverted it from said *Springs* by means of *Ditch* which said *Ditch* is *24* inches by *18* inches in size, and carries or conducts *All of The* inches of water from said *Springs & Seepage*; said *Ditch* taps and diverts the water from said *Springs* upon its *West* bank at a point about 50 feet west of the west line of said *N.W. 1/4 of S.W. 1/4 of said Section 20, in Township 2 South, Range 5 East, in Gallatin County, Montana.* and running thence in a general Northwesterly and Westerly direction and

thence running, or run, to and upon said described land (and through said land, if *I* so desire, to any requisite point of final discharge).

from said ~~spring~~ ^{spring} ~~seepage~~ ; said Ditch taps and diverts the water from said ~~spring~~ ^{spring} at a point upon its West bank at a point about 50 feet west of the west line of 307 said N.W. 1/4 of S.W. 1/4 of said Section 20, in Township 2 South, Range 5 East, in Gallatin County, Montana. and running thence in a general Northwesterly and Westerly direction and

thence running, or run, to and upon said described land (and through said land, if I so desire, to any requisite point of final discharge).

IV. That I appropriated and took said water on the 1st day of July A. D. 1922 by means of said Ditch

V. That the name of the appropriator of said water is Mollie E. Elliott

VI. That I also hereby claim said ditch and the right of way therefor, and for said water by it conveyed, or to be conveyed, from said point of appropriation to said land or point of final discharge, and also the right of location upon any lands of any dams, flumes, reservoirs, constructed or to be constructed by me in appropriating and in using said water.

VII. That I also claim the right to keep in repair and to enlarge said means of water appropriation at any time, and the right to dispose of said right, water, ditch, or said appurtenances, in part or whole, at any time.

CLAIMING THE SAME, all and singular, under any and all laws, National and State, and rulings and decisions thereunder, in the matter of water rights, and specifically under Sections 1880 to 1902, inclusive, of the Civil Code of Montana, or as amended, and under an Act of the Sixth Legislative Assembly of the State of Montana, entitled "An Act establishing a Standard Measurement for Water, defining the equivalent of a Miner's Inch, and repealing Section 1893, Title VIII, Part IV, Division II, of the Civil Code of the State of Montana and all conflicting laws," approved March 3d, 1899. TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging or appertaining, or to accrue to the same.

Witness my hand, at Bozeman State of Montana, this 3rd day of July 1922
Mollie E. Elliott

from said point of appropriation to said land or point of final discharge, and also the right of location upon any lands of any dams, flumes, reservoirs, constructed or to be constructed by me in appropriating and in using said water.

VII. That I also claim the right to keep in repair and to enlarge said means of water appropriation at any time, and the right to dispose of said right, water, ditch, or said appurtenances, in part or whole, at any time.

CLAIMING THE SAME, all and singular, under any and all laws, National and State, and rulings and decisions thereunder, in the matter of water rights, and specifically under Sections 1880 to 1902, inclusive, of the Civil Code of Montana, or as amended, and under an Act of the Sixth Legislative Assembly of the State of Montana, entitled "An Act establishing a Standard Measurement for Water, defining the equivalent of a Miner's Inch, and repealing Section 1893, Title VIII, Part IV, Division II, of the Civil Code of the State of Montana and all conflicting laws," approved March 3d, 1893. TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging or appertaining, or to accrue to the same.

Witness my hand, at Bozeman State of Montana, this 3rd day of July 1922
Mollie E. Elliott

STATE OF MONTANA, }
COUNTY OF GALLATIN. } ss.

Mollie E. Elliott

having first been duly sworn, depose and say that she is of lawful age and is the appropriator and claimant of the water and water right mentioned in the foregoing Notice and Statement of appropriation and claim, and the person whose name is subscribed thereto as the appropriator and claimant; that she knows the contents of said Notice and Statement foregoing, and that the matters and things therein stated are true.

Subscribed and sworn to before me, this 3rd day of July A. D. 1922

(Seal)

J. H. Harris
Notary Public for the State of Montana
Residing at Bozeman Mont.
My Commission expires Feb 19 1925

Mollie E. Elliott

Filed for Record on the 3rd day of July A. D. 1922 at 4:35 o'clock P. M.

By W. B. Fowler Deputy.

J. H. Harris County Recorder.

NOTICE OF WATER RIGHT.

STATE OF MONTANA, }
COUNTY OF GALLATIN. }

To All Whom these Presents may Concern:

Be it Known, That *L. Mollie E. Elliott*

of said County and State, do hereby publish and declare, as a legal notice to all the world.

I. That *L.* has legal right to the use, possession and control of, and claim *all of the* inches of the waters of *certain springs and seepage waters* in said County and State, for irrigating and other purposes.

II. That the special purpose for which said water is intended to be used, and the place of intended use, is *The Southeast Quarter of the Northeast Quarter (SE 1/4 of NE 1/4) of Section Nineteen (19), and the South Half of the Northwest Quarter (S 1/2 of NW 1/4) and the west 1/2 of the Southwest Quarter (W 1/2 of SW 1/4) of Section Twenty (20), all in Township (2) South, Range Five (5) East of the Montana Principal Meridian, in Gallatin County, State of Montana*

III. That *L.* have taken said water out of and diverted it from said *Spring* by means of a *Ditch* which said *Ditch* is *2 1/2* inches by *1.8* inches in size, and carries or conducts *All of the* inches of water from said *spring & seepage*; said *Ditch* taps and diverts the water from said *spring* upon its *N.W.* bank *about 100 feet* South of the North line of said *N.W. 1/4 of N.W. 1/4 of said Section 19, in Twp. 2 South, Range 5 East, and thence running in a Northerly and Westerly direction*

thence running, or run, to and upon said described land (and through said land, if *L.* so desire, to any requisite point of final discharge)

IV. That *L.* appropriated and took said water on the *1st* day of *July* A. D. 1902 by means of said *Ditch*

V. That the name of the appropriator of said water is *Mollie E. Elliott*

VI. That *L.* also hereby claim said ditch and the right of way therefor, and for said water by it conveyed, or to be conveyed, from said point of appropriation to said land or point of final discharge, and also the right of location upon any lands of any dams, flumes, reservoirs, constructed or to be constructed by *L.* in appropriating and in using said water.

VII. That *L.* also claim the right to keep in repair and to enlarge said means of water appropriation at any time, and the right to dispose of said right, water, ditch, or said appurtenances, in part or whole, at any time.

CLAIMING THE SAME, all and singular, under any and all laws, National and State, and rulings and decisions thereunder, in the matter of water rights, and specifically under Sections 1880 to 1902, inclusive, of the Civil Code of Montana, or as amended, and under an Act of the Sixth Legislative Assembly of the State of Montana, entitled "An Act establishing a Standard Measurement for Water, defining the equivalent of a Miner's Inch, and repealing Section 1893, Title VIII, Part IV, Division II, of the Civil Code of the State of Montana and all conflicting laws," approved March 3d, 1890. TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging or appertaining, or to accrue to the same.

Witness My hand, at *Bozeman*, State of Montana, this *3rd* day of *July*, 1902
Mollie E. Elliott

STATE OF MONTANA, }
COUNTY OF GALLATIN. }

having first been duly sworn, depose and say, that *she* is of lawful age and the appropriator and claimant of the water and water right mentioned in the foregoing Notice and Statement of appropriation and claim, and the person whose name *LS* subscribed thereto as the appropriator and claimant, that *she* knows the contents of said Notice and Statement foregoing, and that the matters and things therein stated are true.

Subscribed and sworn to before me, this *3rd* day of *July*, A. D. 1902

Mollie E. Elliott

Notary Public in the State of Montana
Residing at Bozeman, Montana
My Commission expires Feb'y 19 1905

Filed for Record on the *3rd* day of *July*, A. D. 1902 at *4* o'clock P. M.

Case 41H-0173-R-2021

Gallatin County, MT



41H 33078 00 & 41H 33084 00

- Blackwood Dry Creek Limited Partnership Property
- Leah Rachelle Isaacs 2011 Trust Property
- Blackwood West LLC Property
- Barbara L Denny Property

41H 33078 00

- Diversionary POD (Headgate)
- Diversionary POUs from Ditch System
- Livestock Direct from Source PODs and POUs

41H 33084 00

- POD (Headgate)
- Claimed POU
- POU Physically Irrigable from Historic Ditches

Created: 5/21/2021

Aerial Imagery: 7/20/2019 NAIP



0 0.1 0.2

Miles

This map is for illustrative purposes only and does not guarantee the accuracy of delineated boundaries.

Exhibit C



DITCH RIGHT AND WATER RIGHT

AGREEMENT

THIS AGREEMENT made and entered into this 3rd day of January, A. D., 1964, by and between EDWARD D. BLACKWOOD and JUNE B. BLACKWOOD, husband and wife, whose post office addresses are Bozeman, Montana, the parties of the first part, and THOMAS B. TODD and ERMA L. TODD, husband and wife, whose post office addresses are Bozeman, Montana, as parties of the second part, WITNESSETH:

That the parties of the first part are the owners of the South Half and the West Half of the Northeast Quarter and the East Half of the Northwest Quarter, all in Section 19, Township 2 South of Range 5 East, Gallatin County, Montana; that second parties are the owners of the West Half of the Southwest Quarter, and the Southwest Quarter of the Northwest Quarter of Section 20, and the Southeast Quarter of the Northeast Quarter of Section 19, all in Township Two South of Range 5 East, M.P.M., and

WHEREAS, a spring arises approximately in the northwest corner of Section 29, Township 2 South of Range 5 East, and flows across the South line of Section 20 for a distance of about 1200 feet in a north, northwesterly direction at which point it intersects the East line of Section 19, and thence flows in a northerly direction to the Northeast corner of the Southeast Quarter of said Section 19, thence to and upon the Southeast Quarter of the Northeast Quarter, and thence in a northwesterly direction across said Southeast Quarter of the Northeast Quarter to and upon the Southeast Quarter of the Northeast Quarter of said Section 19; first parties for their use of said water taps said spring water stream at a point about 1500 feet north of the south line of said Section 20, and on the east line of said Section 19, thence in a northwesterly direction to and upon the West Half of the Northeast Quarter and the East Half of the Northwest Quarter of said Section 19; Said spring produces and flows

approximately one hundred miners inches of waters which can and is being used for irrigation of the lands owned by the parties hereto.

NOW THEREFORE IT IS MUTUALLY AGREED betw een the parties

said section 15, and

laid out and constructed and more particularly hereinbefore described.

pasture of the parties of the second part.

1000. 1000. 1000. 1000.

Parties of the first part

Parties of the second part.

-page three-

STATE OF MONTANA

:ss

County of Gallatin

On this 3 day of January, A. D., 1964, before me, ROY M. KEISTER, a Notary Public for the State of Montana, personally appeared EDWARD D. BLACKWOOD and JUNE B. BLACKWOOD, husband and wife, and THOMAS B. TODD and ERMA L. TODD, husband and wife, of Bozeman Gallatin County, Montana, known to me to be the persons who executed the foregoing Agreement and acknowledged to me that they had executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

Notary Public for the State of Montana. Residing at Bozeman, Montana. My commission expires September 17, 1966.

3:30

P.

5

EARL WALTON

\$6.00 pd

Rt: Ed Blackwood, Star Route, Bozeman.

January 3

19 64

WATER RIGHTS

432

Case 41H-0173-R-2021


Gallatin County, MT



41H 33070 00 & 41H 33083 00

 Blackwood Dry Creek Limited Partnership Property

 Leah Rachelle Isaacs 2011 Trust Property

 Blackwood West LLC Property

41H 33070 00

 Livestock Direct from Source
PODs & POUs

41H 33083 00

 POD (Spring & Ditch)

 Claimed POU

Created: 5/20/2021

Aerial Imagery: 7/20/2019 NAIP



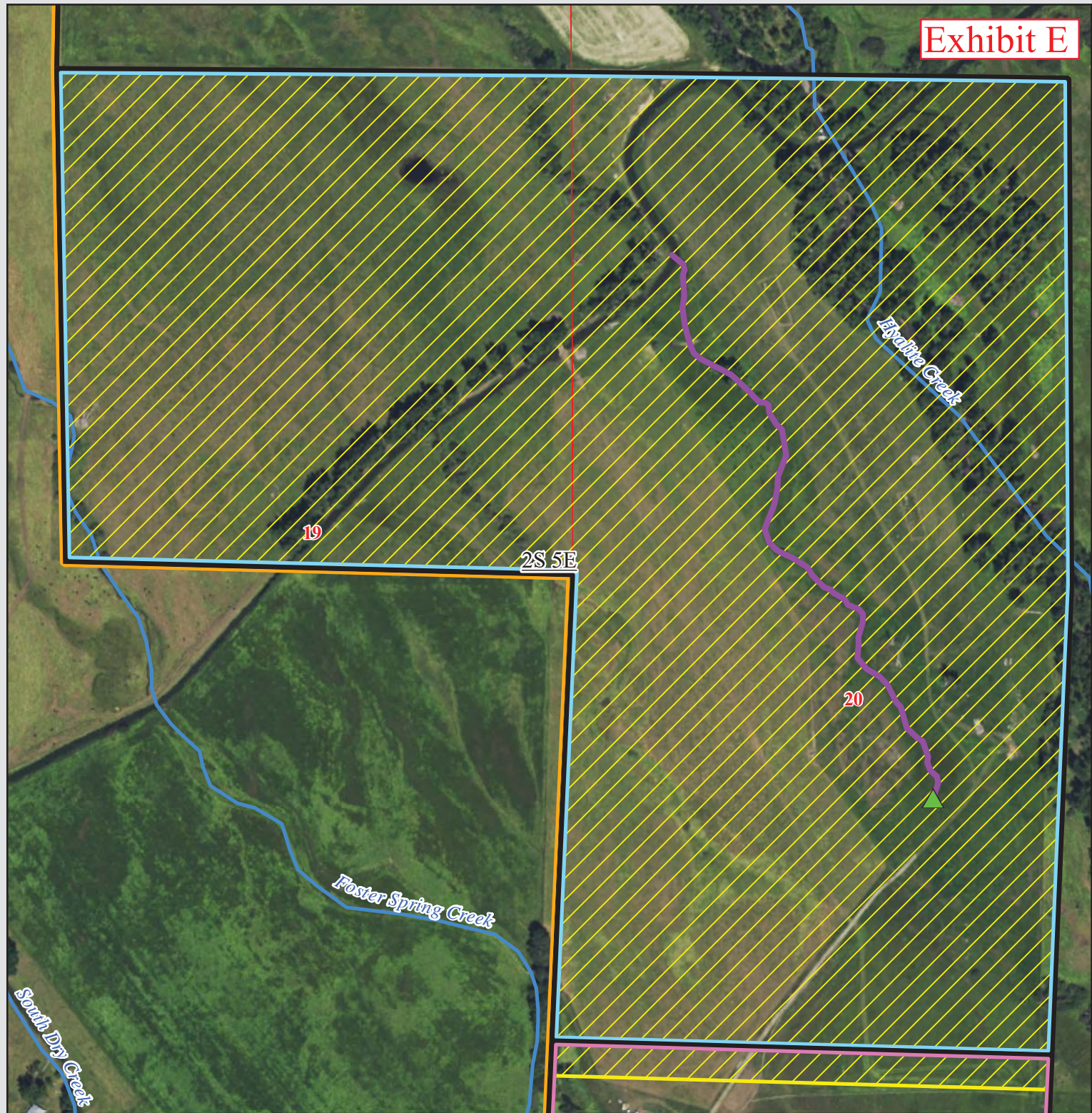
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Miles

This map is for illustrative purposes only and does not guarantee the accuracy of delineated boundaries.

Exhibit E



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

EXHIBIT F

IMPORTANT NOTICE

YOUR WATER RIGHT AS SHOWN ON THIS ABSTRACT MAY HAVE CHANGES FROM YOUR WATER RIGHT AS CLAIMED OR AMENDED. AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY THE MONTANA WATER COURT AFTER ISSUANCE OF THE TEMPORARY PRELIMINARY DECREE OR BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (DNRC) DURING THE PREPARATION OF THIS PRELIMINARY DECREE. THESE CHANGES ARE AUTHORIZED BY THE MONTANA SUPREME COURT WATER RIGHT CLAIMS EXAMINATION RULES OR BY ORDER OF THE WATER COURT.

OBJECTIONS MAY BE FILED ACCORDING TO THE PROCEDURES OUTLINED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

Water Right Number: 41H 33078-00 STATEMENT OF CLAIM

Version: 2 -- REEXAMINED

Status: ACTIVE

Owners: ISAACS, LEAH RACHELLE 2011 TRUST
DAVID ISAACS TRUSTEE
PO BOX 456
CANADIAN, TX 79014 0456

Priority Date: JULY 1, 1922

Type of Historical Right: FILED

Purpose(use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: ~~SPRING, UNNAMED TRIBUTARY OF HYALITE CREEK~~ Unnamed Tributary of South Dry Creek

Source Type: ~~GROUNDWATER~~ 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	SENESE	NNNN	29	19	2S	5E GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: ~~DITCH~~ Headgate

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			SENE	19	2S	5E	GALLATIN
2		W2SWSW	W2SW	20	2S	5E	GALLATIN

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

33078-00 33084-00

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

THE FOLLOWING ISSUES WERE IDENTIFIED BY THE DNRC DURING ITS EXAMINATION OF THIS WATER RIGHT CLAIM.

THE CLAIMS LISTED AT THE END OF THIS STATEMENT CLAIM THE SAME NOTICE OF APPROPRIATION. THE CLAIMED NOTICE OF APPROPRIATION DOES NOT SPECIFY A FLOW RATE. 41H 33070-00, 41H 33078-00, 41H 33083-00, 41H 33084-00

A BETTER UNDERSTANDING OF YOUR CLAIMED WATER RIGHT CAN BE OBTAINED BY COMPARING YOUR RIGHT WITH OTHER CLAIMS IN THE BASIN. FOR EXAMPLE, COMPARE PRIORITY DATES, FLOW RATES, VOLUMES, OR ACRES IRRIGATED. ALSO, YOUR WATER RIGHT MAY BE SUBJECT TO WATER RIGHTS IN ADJOINING SUBBASINS OR BASINS AS WELL AS BEING SUBJECT TO OTHER RIGHTS ON YOUR SOURCE OF SUPPLY. FINALLY, YOUR WATER RIGHT MAY BE SUBJECT TO INDIAN RESERVED AND FEDERAL RESERVED WATER RIGHTS.

COMPLETE DETAILS REGARDING THE DNRC PREPARATION OF THIS PRELIMINARY DECREE AND RELATED MATERIALS CAN BE REVIEWED AT THE OFFICE LOCATIONS IDENTIFIED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

SEE GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR FURTHER EXPLANATION OF YOUR CLAIMED WATER RIGHT. THESE FINDINGS CAN BE FOUND AS INDICATED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY." IF YOU NEED OBJECTION FORMS, OR HAVE QUESTIONS ABOUT WATER COURT PROCEDURES OR CHANGES TO YOUR RIGHT, YOU CAN CONTACT THE WATER COURT BY CALLING 1-800-624-3270 (WITHIN MONTANA ONLY) OR 1-406-586-4364, OR BY WRITING TO P.O. BOX 1389, BOZEMAN, MT 59771-1389.

Additional Proposed PODs

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
2		W2SWSW	20	2S	5E	GALLATIN

Period of Diversion: January 1 to December 31

Diversion Means: Livestock Direct from Source

3	SESENE	19	2S	5E	GALLATIN
---	--------	----	----	----	----------

Period of Diversion: January 1 to December 31

Diversion Means: Livestock Direct from Source

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

EXHIBIT G

IMPORTANT NOTICE

YOUR WATER RIGHT AS SHOWN ON THIS ABSTRACT MAY HAVE CHANGES FROM YOUR WATER RIGHT AS CLAIMED OR AMENDED. AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY THE MONTANA WATER COURT AFTER ISSUANCE OF THE TEMPORARY PRELIMINARY DECREE OR BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (DNRC) DURING THE PREPARATION OF THIS PRELIMINARY DECREE. THESE CHANGES ARE AUTHORIZED BY THE MONTANA SUPREME COURT WATER RIGHT CLAIMS EXAMINATION RULES OR BY ORDER OF THE WATER COURT.

OBJECTIONS MAY BE FILED ACCORDING TO THE PROCEDURES OUTLINED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

Water Right Number: 41H 33084-00 STATEMENT OF CLAIM

Version: 2 -- REEXAMINED

Status: ACTIVE

Owners: ISAACS, LEAH RACHELLE 2011 TRUST
DAVID ISAACS TRUSTEE
PO BOX 456
CANADIAN, TX 79014 0456

Priority Date: JULY 1, 1922

Type of Historical Right: FILED

Purpose(use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: ~~6.06 CFS~~ 2.5 CFS

***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: ~~160.00~~ 37.1

Source Name: ~~SPRING, UNNAMED TRIBUTARY OF HYALITE CREEK~~ Unnamed Tributary of South Dry Creek

Source Type: ~~GROUNDWATER~~ Surface Water

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	SENESE	NWNWNW	29 19	2S	5E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Period of Use: APRIL 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	40.00 36.67		SENE	19	2S	5E	GALLATIN
2	80.00 0.43	NWSWNW	W2SW	20	2S	5E	GALLATIN
3	40.00		SWNW	20	2S	5E	GALLATIN
Total:	160.00 37.1						

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.

33081-00 33082-00 33083-00 33084-00

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME PLACE OF USE.

33081-00 33082-00 33083-00 33084-00 55084-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

33078-00 33084-00

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

THE FOLLOWING ISSUES WERE IDENTIFIED BY THE DNRC DURING ITS EXAMINATION OF THIS WATER RIGHT CLAIM.

THE CLAIMS LISTED AT THE END OF THIS STATEMENT CLAIM THE SAME NOTICE OF APPROPRIATION. THE CLAIMED NOTICE OF APPROPRIATION DOES NOT SPECIFY A FLOW RATE. 41H 33070-00, 41H 33078-00, 41H 33083-00, 41H 33084-00

A BETTER UNDERSTANDING OF YOUR CLAIMED WATER RIGHT CAN BE OBTAINED BY COMPARING YOUR RIGHT WITH OTHER CLAIMS IN THE BASIN. FOR EXAMPLE, COMPARE PRIORITY DATES, FLOW RATES, VOLUMES, OR ACRES IRRIGATED. ALSO, YOUR WATER RIGHT MAY BE SUBJECT TO WATER RIGHTS IN ADJOINING SUBBASINS OR BASINS AS WELL AS BEING SUBJECT TO OTHER RIGHTS ON YOUR SOURCE OF SUPPLY. FINALLY, YOUR WATER RIGHT MAY BE SUBJECT TO INDIAN RESERVED AND FEDERAL RESERVED WATER RIGHTS.

COMPLETE DETAILS REGARDING THE DNRC PREPARATION OF THIS PRELIMINARY DECREE AND RELATED MATERIALS CAN BE REVIEWED AT THE OFFICE LOCATIONS IDENTIFIED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

SEE GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR FURTHER EXPLANATION OF YOUR CLAIMED WATER RIGHT. THESE FINDINGS CAN BE FOUND AS INDICATED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY." IF YOU NEED OBJECTION FORMS, OR HAVE QUESTIONS ABOUT WATER COURT PROCEDURES OR CHANGES TO YOUR RIGHT, YOU CAN CONTACT THE WATER COURT BY CALLING 1-800-624-3270 (WITHIN MONTANA ONLY) OR 1-406-586-4364, OR BY WRITING TO P.O. BOX 1389, BOZEMAN, MT 59771-1389.