

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

* * * * *

CLAIMANTS: Aspen Springs Leasing LLC; Tona L. Doney;
Dawn A. Inman; Timothy A. Inman; Gayle
Stoeber; Kenneth B. Stoeber

CASE 41H-0894-R-2021
41H 154121-00
41H 211099-00

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 154121-00 and 41H 211099-00 appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with issue remarks received during

the Department of Natural Resources and Conservation's (DNRC) review in preparation of the preliminary decree.

The Water Court consolidated the claims into Water Court case 41H-0894-R-2021 and set filing deadlines pursuant to § 85-2-258(5), MCA, for the claims' owners to contact and work with DNRC to resolve the issue remarks. On December 9, 2021, DNRC filed a Memorandum (DNRC Memo) with the Water Court. The DNRC Memo indicates the claims' owners, DNRC personnel, and DMS Natural Resources met virtually on September 24, 2021.

The Water Court presently resolves the issues.

ISSUES

1. Whether a preponderance of the evidence supports modifying the place of use, total maximum acres, flow rate, and/or volume for water right claim 41H 211099-00.

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.

DNRC's express duty in the adjudication process is to identify potential issues with water rights and to provide factual analysis to the water court prior to decree issuance. Rules 1(b) and 2(a), W.R.C.E.R. The Water Court is not bound by the W.R.C.E.R. or the technical assistance provided by the DNRC. Rules 1(b) and 2(a), W.R.C.E.R.

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, including a claimant objecting

to his or her own claim, bears the burden of proof. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

The Water Court may correct a clerical mistake found in a judgment, order, or other part of the record on motion or on its own, with or without notice. Rule 60(a), M.R.Civ.P.

DISCUSSION

1. *Whether a preponderance of the evidence supports modifying the place of use, total maximum acres, flow rate, and/or volume for water right claim 41H 211099-00.*

Water right claim 41H 211099-00 is a filed flood-irrigation claim for surface water from Goose Creek in Gallatin County, Montana. The water right claim received the following issue remarks:

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

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

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

The claim's preliminary decree abstract currently states the claim's flow rate is 219.91 gallons per minute (GPM) and the claim's total maximum acres are 12.8 acres in the W2SE of Section 9, Township 3S, Range 4E, Gallatin County, Montana. The claim's volume states: "THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE."

The DNRC Memo states: "This right was originally claimed for 12.8 acres in the W2SE of Section 9, Township 3 South, Range 4 East, Gallatin County. A previous DNRC examiner verified the 12.8 acres on aerial imagery from 1979. DMS submitted a map to DNRC outlining the acreage which matches the verified acreage. DNRC and the claimants agree that the acreage should remain as claimed, and the issue remark may be removed from the claim abstract." DNRC attached a map depicting the claim's place of use to the DNRC Memo. The prima facie status afforded to the claimed place of use has not been overcome by a preponderance of the evidence. Because the court does not modify the total maximum acres, no changes will be made to the claimed flow rate and volume appearing on the preliminary decree abstract. The issue remarks are resolved and hereby removed.

The DNRC Memo further asks the court to correct the claim's point of diversion, stating:

The Point of Diversion for this claim is currently listed as *SWSWSE of Section 9, Township 3 South, Range 4 East*, but this appears to be a 'down ditch' diversion and requires correction for accurate administration. Claimants submitted a map which pinpoints the actual location where Goose Creek intersects Cockrill Ditch (the conveyance for this right) at the *SWNWNE of Section 16, Township 3 South, Range 4 East*. DNRC agrees with the claimants that the *SWNWNE of Section 16, Township 3 South, Range 4 East* is a more accurate depiction of the Point of Diversion for this claim and the abstract should be updated. The submitted map is attached for reference and may be added to the claim file for clarity.

Pursuant to its authority under Rule 60(a), M.R.Civ.P., the Water Court corrects the legal land description for the point of diversion accordingly.

Finally, water right claim 41H 154121-00 received an issue remark providing notice DNRC made a clerical correction to the point of diversion during reexamination of the basin. The issue remark states if no objections are filed to the claim, the remark will be removed. The claim did not receive objections, no proceedings are required, and the issue remark shall be removed.

RECOMMENDATION

This Water Master recommends the Water Court to remove the resolved issue remarks and to correct the legal land description identifying the point of diversion for water right claims 41H 211099-00 from the *SWSWSE of Section 9, Township 3S, Range 4E*, Gallatin County, to the *SWNWNE of Section 16, Township 3S, Range 4E*, Gallatin County. The Water Court attaches post-decree abstracts, DNRC Memo, and map to this Master's Report.

Kirsa Shelkey
Water Master
she/her/hers

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DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION



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GOVERNOR

STATE OF MONTANA

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2273 BOOT HILL COURT
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BOZEMAN, MONTANA 59715

MEMORANDUM

DATE: December 9, 2021

ELECTRONICALLY FILED

CASE HEADING: 41H-0894--R-2021

41H 154121-00

41H-0894-R-2021

41H 211099-00

December 9, 2021

TO: Kirsa Shelkey
Water Master

Montana Water Court

FROM: Kara Huyser
Water Resource Specialist

CLAIMANT(S): Aspen Springs Leasing LLC; Tona L. Doney; Dawn A. Inman; Timothy A. Inman; Gayle Stoeber; Kenneth B. Stoeber

Introduction:

On September 8, 2021, the Water Court ordered the claimants to confer with the DNRC Bozeman Regional Office to resolve issue remarks placed as a result of DNRC examination. The Water Court further requested DNRC provide a memorandum and discussing the results of that conference and submit recommendations for the resolution of said remarks. DNRC, claimants, and claimants' representatives met via video conference on September 24th, 2021 and DMS Natural Resources (DMS) submitted documentation to DNRC to resolve the issue remarks.

Materials Reviewed:

- Information in claim file
- DMS submittal dtd. 09/27/2021 and 09/30/2021
- USDA Aerial Imagery, 279-7L
- USGS Topographic Quadangles: Gallatin Gateway—1987
- Water Rights Claim Examination Rules, (W.R.C.E.R.), 2013

Discussion:

41H 211099-00, Irrigation; GOOSE CREEK:

Place of Use Issue Remark, P288:

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.

This right was originally claimed for 12.8 acres W2SE of 9, Township 3 South, Range 4 East, Gallatin County. A previous DNRC examiner verified the 12.8 acres on aerial imagery from 1979. DMS submitted a map to DNRC outlining the acreage which matches the verified acreage. DNRC and the claimants agree that the acreage should remain as claimed, and the issue remark may be removed from the claim abstract.

Volume Issue Remark, V55:

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

Per Rule 15(c), W.R.C.E.R. this claim will not be decreed a Volume. The following, standard, informational remark already exists on the claim abstract, and DNRC believes the issue remark may be removed.

VF009 THE TOTAL VOLUME OF THE RIGHT SHALL NOT EXCEED THE
AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Flow Rate Issue Remark, F180:

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

DNRC does not recommend any change to the maximum acreage and as such, DNRC and the claimants agree the flow rate may also remain as currently listed on the claim abstract.

NOTE: The Point of Diversion for this claim is currently listed as *SWSWSE of Section 9, Township 3 South, Range 4 East*, but this appears to be a ‘down ditch’ diversion and requires correction for accurate administration. Claimants submitted a map which pinpoints the actual location where Goose Creek intersects Cockrill Ditch (the conveyance for this right) at the *SWNWNE of Section 16, Township 3 South, Range 4 East*. DNRC agrees with the claimants that the *SWNWNE of Section 16, Township 3 South, Range 4 East* is a more accurate depiction of the Point of Diversion for this claim and the abstract should be updated. The submitted map is attached for reference and may be added to the claim file for clarity.

41H 154121-00, Irrigation; WEST GALLATIN RIVER:

Gray Area Issue Remark, T997:

A CLERICAL CORRECTION HAS BEEN MADE TO THE POINT OF DIVERSION.
BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY
WATER USER WHOSE RIGHT MAY BE ADVERSELY AFFECTED BY ENFORCEMENT
OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY
FILE AN OBJECTION AT THE PRELIMINARY DECREE.

DNRC and the claimants agree that the Point of Diversion should remain as corrected on the current abstract at SENWNW of Section 22, Township 3 South, Range 4 East, Gallatin County. This legal land description is in agreement with other claims using the same diversion and is part of the West Gallatin Enforcement Project.

By: /s/ Kara Huyser **December 9, 2021**
Kara Huyser, Water Resource Specialist

REVIEWED:

By: /s/ Kerri Strasheim **December 9, 2021**
Kerri Strasheim, Bozeman Regional Manager

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Gayle Stoeber
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289 Black Dog Rd
Gallatin Gateway, MT 59730


41H 211099 00


Gallatin County, MT




 Aspen Springs Leasing LLC Property


 Timothy A. Inman Property

 41H 211099 00 PODs

 41H 211099 00 POU

Ditches*

 Noble Ditch

 Shadoan-Cockrill Ditch

*Based on Water Resource Survey Information and claim file maps and refined based on aerial imagery.

Created 09/28/2021

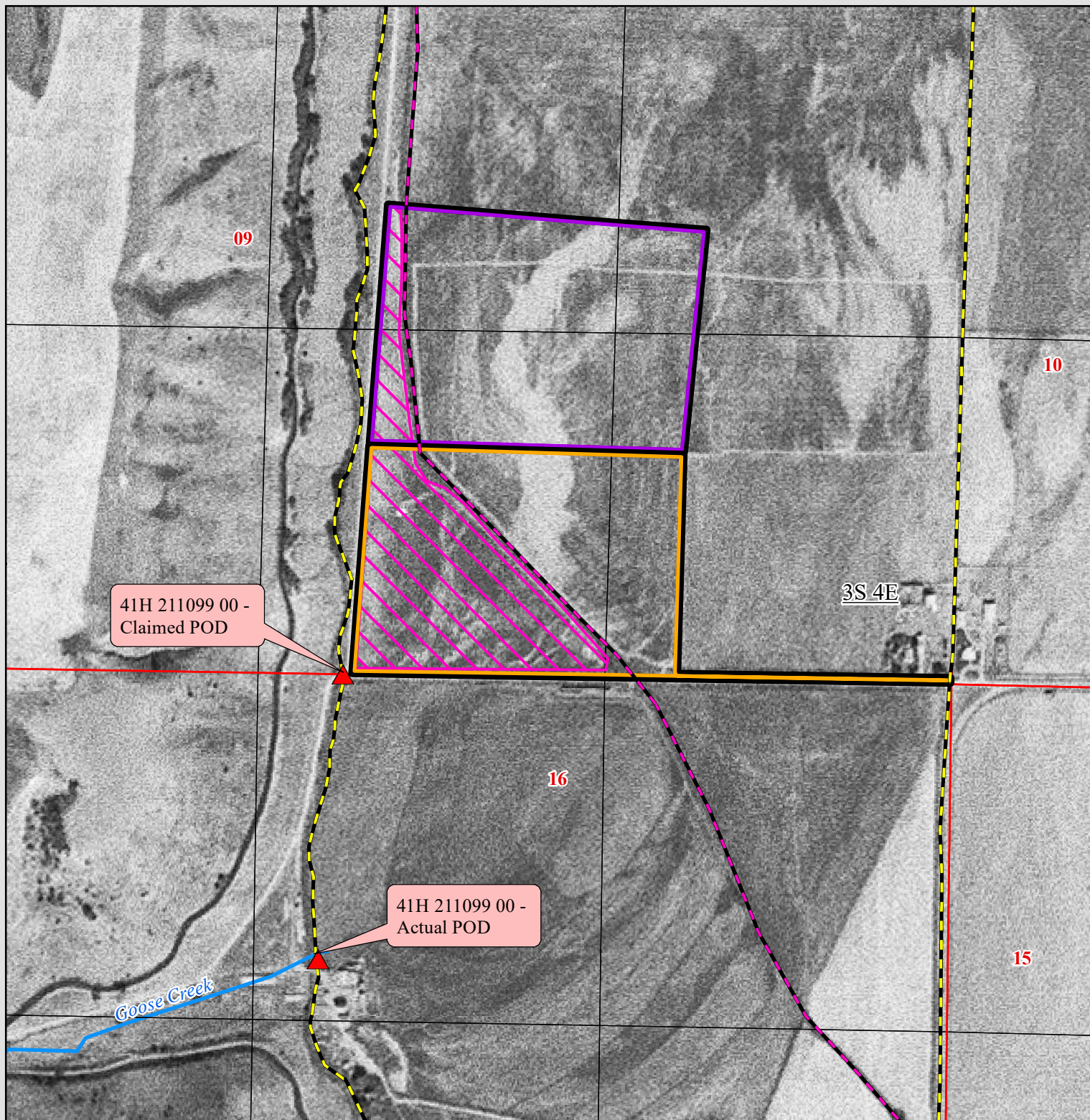
Aerial Imagery: 9/5/1976 USGS



0 0.075 0.15

Miles

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



**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 154121-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:

TONA L DONEY
PO BOX 108
WHITEHALL, MT 59759 0108

DAWN A INMAN
217 BLACK DOG RD
GALLATIN GATEWAY, MT 59730 8589

TIMOTHY A INMAN
217 BLACK DOG RD
GALLATIN GATEWAY, MT 59730 8589

GAYLE STOEBER
289 BLACK DOG RD
GALLATIN GATEWAY, MT 59730 8589

KENNETH B STOEBER
289 BLACK DOG RD
GALLATIN GATEWAY, MT 59730 8589

ASPEN SPRINGS LEASING LLC
220 ASPEN SPRINGS RD
BOZEMAN, MT 59715

Priority Date: JUNE 1, 1866

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.35 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: 98.00

Source Name: WEST GALLATIN RIVER

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		SENWNW	22	3S	4E	GALLATIN

Period of Diversion: MAY 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: NOBLE DITCH

Period of Use: MAY 15 TO OCTOBER 15

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	98.00		SE	9	3S	4E	GALLATIN
Total:	98.00						

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 211099-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: ASPEN SPRINGS LEASING LLC
220 ASPEN SPRINGS RD
BOZEMAN, MT 59715

Priority Date: DECEMBER 31, 1898

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 10/04/1984 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 219.91 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: 12.80

Source Name: GOOSE 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		SWNWNE	16	3S	4E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO OCTOBER 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	12.80		W2SE	9	3S	4E	GALLATIN

Total: 12.80