

41H-0172-R-2021

July 7, 2021

Montana Water Court

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

* * * * *

CLAIMANT: Big Sky County Water & Sewer Dist #363

OBJECTOR: Big Sky County Water & Sewer Dist #363

NOTICE OF INTENT TO APPEAR: City of Three Forks; Four
Corners County Water &
Sewer District

CASE 41H-0172-R-2021

41H 122636-00

41H 122637-00

41H 133733-00

41H 148445-00

41H 148446-00

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 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 mail 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 122636-00, 41H 122637-00, 41H 133733-00, 41H 148445-00, and 41H 148446-00, owned by Big Sky County Water & Sewer District #363 (Big Sky), appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with issue remarks received during the Montana Department of Natural Resources and Conservation's (DNRC) review in preparation for a final decree.

Water rights claims 41H 122636-00, 41H 122637-00, and 41H 133733-00 received an issue remark stating: "THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 41H 122636-00, 41H 122637-00, 41H 133733-00."

Water rights claims 41H 122636-00, 41H 122637-00, and 41H 133733-00 received an issue remark stating: "THE PRIORITY DATE MAY BE QUESTIONABLE. THE DATE OF FILING THE FORM GW2, NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION, IS 01/30/1974."

Big Sky, through counsel Michael Cusick, filed objections to the priority dates and "other" elements for water rights claims 41H 122636-00, 41H 122637-00, and 41H 133733-00. Big Sky filed an additional objection to the flow rate for water right claim 41H 148446-00.

The City of Three Forks (City) through counsel Dana Pepper filed a Notice of Intent to Appear (NOIA) in the proceedings resolving the issues regarding water rights claims 41H 122636-00, 41H 122637-00, 41H 133733-00, 41H 148445-00, and 41H 148446-00. Four Corners County Water & Sewer District (Four Corners) through counsel Dana Pepper additionally filed a NOIA in the proceedings resolving the issues regarding water right claim 41H 148445-00.

The Water Court consolidated the water rights claims into Water Court case 41H-0172-R-2021 and set a filing deadline for the parties to file information resolving the issues. On May 12, 2021, Big Sky filed a motion with the Water Court to resolve the objections and issues. On May 20, 2021, the NOIA parties filed a response stating the parties did "not take a position or otherwise oppose" the motion.

The Water Court presently resolves the issues in this case.

ISSUES

1. *Whether water rights claims 41H 122636-00, 41H 122637-00, and 41H 133733-00 involve duplicate filings for one water right.*
2. *Whether the priority date for water rights claims 41H 122636-00, 41H 122637-00, 41H 133733-00 is January 30, 1974, pursuant to § 85-2-306(4), MCA.*
3. *Whether the Water Court reinstates the 9.1 CFS flow rate for water rights claims 41H 148445-00 and 41H 148446-00 consistent with the court's previous findings and conclusions in Water Court case 41H-A13.*

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 counter-objection period follows the objection period. After the close of the counter-objection period, any persons other than the claimants or objectors to a particular claim may file a notice of intent to appear (NOIA). Section 85-2-233(3),(4), MCA; Rule 9, W.R.Adj.R. While a NOIA party is entitled to participate in the proceedings, participation is limited to the “resolution of issues raised by objections, counterobjections, issue remarks, or issues raised on motion of the Water Court.” *In re Erb (Geoduck)*, 2016 Mont. Water Lexis 2, *12. The NOIA party cannot “[expand] the issues in a water rights case.” *Geoduck*, *12.

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 water rights claims 41H 122636-00, 41H 122637-00, and 41H 133733-00 involve duplicate filings for one water right.

Water rights claims 41H 122636-00, 41H 122637-00, and 41H 133733-00 received the following issue remark: “THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 41H 122636-00, 41H 122637-00, 41H 133733-00.”

The May 12, 2021 motion filed by Big Sky asserts the claims reflect separate water rights for groundwater from separate “wells known as Mountain Well Nos. 1, 2, and 3. The claims for these three groundwater wells do not share any common elements such as the location of the well, point of diversion, flow rate and volume, that would logically indicate the possibility of duplicate claims.”

Water right claim 41H 122636-00 is a commercial-use right for 240 gallons-per-minute (GPM) of groundwater from a well in the SWSESE of Section 19, Township 6S, Range 3E, Madison County—“Cascade SUBD (Big Sky) Block:001.” Water right claim 41H 122637-00 is a commercial-use right for 80 GPM of groundwater from a well in the NENENE of Section 30, Township 6S, Range 3E, Madison County—Cascade SUBD (Big Sky). Water right claim 41H 133733-00 is a commercial-use right for 180 GPM of groundwater from a well in the NWNENE of Section 30, Township 6S, Range 3E, Madison County—Cascade SUBD (Big Sky).

Based on the court’s review of the claimed elements, the statements of claim, and the Notices of Completion of Groundwater Appropriation by Means of Well, these claims reflect separate wells in differing locations with unique flow rates and volumes. DNRC

erred in adding the issue remarks to the claims. The court therefore removes the issue remarks from the claims' decree abstracts, resolving Big Sky's objections regarding the duplicate-filing issue remarks.

2. *Whether the priority date for water rights claims 41H 122636-00, 41H 122637-00, 41H 133733-00 is January 30, 1974, pursuant to § 85-2-306(4), MCA.*

The preliminary decree abstracts for groundwater-well claims 41H 122636-00, 41H 122637-00, and 41H 133733-00 indicate the claims' priority date is January 30, 1974. Issue remarks appearing on the claims states "THE PRIORITY DATE MAY BE QUESTIONABLE. THE DATE OF FILING THE FORM GW2, NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION, IS 01/30/1974."

Big Sky filed objections to the January 30, 1974 priority date for water rights claims 41H 122636-00, 41H 122637-00, and 41H 133733-00, asserting the priority date should state October 1, 1972—the date the wells were first put to use according to March 15, 1982 Statements of Claim for Existing Water Rights and attached Notices of Completion of Groundwater Appropriation by Means of Well appearing in the claims' files.

The court disagrees. Prior to the Montana Legislature's enactment of the Montana Water Use Act, the 1961 Montana Groundwater Code required groundwater well appropriators to file a notice of completion with the appropriate county clerk and recorder. The 1961 Groundwater Code applied to original appropriations made from January 1, 1962, to July 1, 1973. Pursuant to the 1961 Groundwater Code, the priority date was the date of filing of the notice of completion with the appropriate county clerk and recorder. However, to address filing irregularities between counties, the Montana Legislature enacted § 85-2-306(4), MCA, which states:

An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(emphasis added). Section 85-2-306(3)(c), MCA, states: “A certificate of water right may not be issued until a correct and complete notice has been filed with the department . . . The date of filing of the notice of completion is the date of priority of the right.”

A plain reading of the statutory language indicates the priority date for groundwater from wells appropriated between January 1, 1962, and July 1, 1973, is the date the notice of completion was filed with the clerk and county recorder pursuant to the 1961 Groundwater Code, the date the notice of completion was filed with DNRC pursuant to § 85-2-306(3) and (4), MCA, or the date of the filing of the Statement of Claim for Existing Water Rights pursuant to §§ 85-2-221, -306(4), MCA.

Here, the notices of completion indicate the wells were completed August 18, 1972. There is no evidence in the record that the notices were filed with the county clerk and recorder’s office. The notices of completion were filed with DNRC on January 30, 1974. The statements of claim, including the attached notices of completion, were filed on March 15, 1982. Per statute, the priority date for the water rights claims is January 30, 1974, despite the claimed first dates of use appearing on the notices of completion and statements of claim.

While Big Sky cites the Water Court’s Order Regarding Admissibility of Notices of Appropriation and Burden of Proof, Water Court case 41O-209, *In re Danreuther Ranches*, 2013 Mont. LEXIS 5 (January 31, 2013), the court distinguishes the issues here from the issues and law applicable in that case.

Therefore, pursuant to § 85-2-306(4), MCA, the priority date for water rights claims 41H 122636-00, 41H 122637-00, and 41H 133733-00 is January 30, 1974—the date the notices of completion were filed with DNRC. Big Sky’s motion regarding the priority date for these claims is denied, and the objections and issue remarks are resolved.

3. *Whether the Water Court reinstates the 9.1 CFS flow rate for water rights claims 41H 148445-00 and 41H 148446-00 consistent with the court’s previous findings of fact and conclusions of law in Water Court case 41H-A13.*

Water rights claims 41H 148445-00 and 41H 148446-00 are filed sprinkler-irrigation claims for surface water from the West Fork of the West Gallatin River “impounded in Little Coyote Pond [and] diverted by pump and conveyed to the place of

use.” The water rights are presently used to irrigate the Meadow Village Golf Course in Big Sky, Montana. The preliminary decree abstracts for water rights claims 41H 148445-00 and 148446-00 reflect standardized and unquantified flow rates, stating: “SPECIFIC FLOW RATE[S] HA[VE] NOT BEEN DECREED FOR TH[ESE] USE[S] FROM AN ONSTREAM RESERVIOR.” However, an information remark appearing on the claims states: “Primarily a direct flow system; volume not decreed.”

Big Sky filed an objection to the flow rate for water right claim 41H 148446-00.¹ The objection and filed motion asserts pursuant to previous Water Court proceedings, the flow rate for water rights claims is 9.10 cubic-feet-per-second (CFS), which should be reinstated.

Indeed, an April 17, 2015, Master’s Report and a May 7, 2015 Order Amending and Adopting Master’s Report in Water Court case 41H-A13 appear in the claims’ files. In that case, Big Sky filed a motion to amend the claims by adding a reservoir record, among other changes, to the claims’ decree abstracts. The Water Master ordered Big Sky to publish notice of the motion to amend. The Master’s Report then found a reservoir record for Little Coyote Pond should be added to the claims’ decree abstracts followed by an information remark indicating the “onstream reservoir” was “primarily a direct flow system; volume not decreed.” Thus, the Master’s Report did not disturb the claims’ originally claimed flow rates—9.1 CFS. However, it appears DNRC replaced the quantified flow rates with standardized unquantified flow rates during its reexamination of the claims.

As stated by the present motion filed by Big Sky, the unquantified flow-rate remark reflecting use from an onstream reservoir conflicts with the direct-flow nature of the claims. The court at this time sees no reason to disturb the findings of the previous Master’s Report. It appears DNRC erred in modifying the quantified flow rates for the claims. The Water Court presently reinstates the 9.1 CFS flow rates consistent with the court’s previous decision.

¹ While Big Sky did not file an objection to the flow rate for water right claim 41H 148445-00, the court takes the opportunity to correct errors impacting both claims.

Finally, an issue remark appearing on water right claim 41H 148445-00 states:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON THE WEST GALLATIN WITH A PRIORITY DATE PREDATING CASE NO. 3850, GALLATIN COUNTY.

No information before the court indicates the reason Case No. 3850, Gallatin County, does not include claim 41H 148445-00. The priority-date issue remark is not supported by evidence in the record sufficient to overcome the prima facie status afforded to the claim's priority date. Water right claim 41H 148445-00 did not receive objections regarding the priority date, no additional proceedings are required, and the issue remark can be removed.

RECOMMENDATIONS

This Water Master recommends the Water Court to remove the resolved issue remarks and to reinstate the 9.1 CFS flow rates for water rights claims 41H 148445-00 and 41H 148446-00. The Water Court attaches post-decree abstracts to reflect the changes made.

Kirsa Shelkey
Water Master
she/her/hers

Service via USPS Mail:

Susan B. Swimley
Attorney and Counselor at Law
1807 W Dickerson Unit B
Bozeman, MT 59715

Service Via Electronic Mail:

Michael JL Cusick
Cusick, Farve, Mattick & Refling, P.C.
PO Box 1288
Bozeman, MT 59771-1288
(406) 587-5511
office@cmrlawmt.com

Dana E. Pepper
Bina R. Peters
River and Range Law, PLLC
PO Box 477
Bozeman, MT 59771
(406) 599-7424
office@riverandrangelaw.com
dana@riverandrangelaw.com
bina@riverandrangelaw.com

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

Water Right Number: 41H 122636-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BIG SKY COUNTY WATER & SEWER DIST #363
% RON EDWARDS
PO BOX 160670
BIG SKY, MT 59716 0670

Priority Date: JANUARY 30, 1974

Type of Historical Right: USE

Purpose (Use): COMMERCIAL

Flow Rate: 240.00 GPM

Volume: 194.06 AC-FT

Source Name: GROUNDWATER

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		SWSESE	19	6S	3E	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Subdivision: CASCADE SUBD (BIG SKY) BLOCK: 001

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			SE	19	6S	3E	MADISON
Subdivision:							
			NW	29	6S	3E	MADISON
Subdivision:							
			NE	30	6S	3E	MADISON
Subdivision:							
			NE	30	6S	3E	MADISON
Subdivision:							

Remarks:

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

100737-00 122636-00 122637-00 133733-00

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

Water Right Number: 41H 122637-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BIG SKY COUNTY WATER & SEWER DIST #363
% RON EDWARDS
PO BOX 160670
BIG SKY, MT 59716 0670

Priority Date: JANUARY 30, 1974

Type of Historical Right: USE

Purpose (Use): COMMERCIAL

Flow Rate: 80.00 GPM

Volume: 64.69 AC-FT

Source Name: GROUNDWATER

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		NENENE	30	6S	3E	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Subdivision: CASCADE SUBD (BIG SKY)

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			SE	19	6S	3E	MADISON
Subdivision:		CASCADE SUBD (BIG SKY)	BLOCK: 001				
2			NW	29	6S	3E	MADISON
Subdivision:		CASCADE SUBD (BIG SKY)	BLOCK: 006				
3			NE	30	6S	3E	MADISON
Subdivision:		CASCADE SUBD (BIG SKY)	BLOCK: 006				
4			NE	30	6S	3E	MADISON
Subdivision:		CASCADE SUBD (BIG SKY)					

Remarks:

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

100737-00 122636-00 122637-00 133733-00

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

Water Right Number: **41H 133733-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BIG SKY COUNTY WATER & SEWER DIST #363
 % RON EDWARDS
 PO BOX 160670
 BIG SKY, MT 59716 0670

Priority Date: JANUARY 30, 1974

Type of Historical Right: USE

Purpose (Use): COMMERCIAL

Flow Rate: 180.00 GPM

Volume: 145.54 AC-FT

Source Name: GROUNDWATER

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		NWNENE	30	6S	3E	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Subdivision: CASCADE SUBD (BIG SKY)

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			SE	19	6S	3E	MADISON
Subdivision:							
2			NW	29	6S	3E	MADISON
Subdivision:							
3			NE	30	6S	3E	MADISON
Subdivision:							
4			NE	30	6S	3E	MADISON
Subdivision:							

Remarks:

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

100737-00 122636-00 122637-00 133733-00

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

Water Right Number: 41H 148445-00 STATEMENT OF CLAIM

Version: 6 -- POST DECREE

Status: ACTIVE

Owners: BIG SKY COUNTY WATER & SEWER DIST #363
% RON EDWARDS
PO BOX 160670
BIG SKY, MT 59716 0670

Priority Date: JUNE 23, 1902

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 9.10 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT
PUT TO HISTORICAL AND BENEFICIAL USE.

PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.

Climatic Area: 5 - LOW

Maximum Acres: 240.00

Source Name: WEST GALLATIN RIVER, WEST FORK

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		SESENE	36	6S	3E	GALLATIN

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

WATER IMPOUNDED IN LITTLE COYOTE POND IS DIVERTED BY PUMP AND
CONVEYED TO THE PLACE OF USE.

***Reservoir:** ONSTREAM

Reservoir Name: LITTLE COYOTE POND

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESENE	36	6S	3E	GALLATIN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.50 FEET

Depth: 10.00 FEET

Surface Area: 3.50 ACRES

Capacity: 18.00 ACRE-FEET

Period of Use: JUNE 1 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	100.00	SE	36	6S	3E	GALLATIN
2	100.00	SW	36	6S	3E	GALLATIN
3	35.00	S2S2NE	36	6S	3E	GALLATIN
4	5.00	SENW	36	6S	3E	GALLATIN
Total:	<u>240.00</u>					

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.

148445-00 148446-00

THE MEANS OF DIVERSION, VOLUME AND PERIOD OF DIVERSION WERE AMENDED BY THE WATER COURT PURSUANT TO SECTION 85-2-233(6), MCA.

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

Water Right Number: 41H 148446-00 STATEMENT OF CLAIM

Version: 6 -- POST DECREE

Status: ACTIVE

Owners: BIG SKY COUNTY WATER & SEWER DIST #363
% RON EDWARDS
PO BOX 160670
BIG SKY, MT 59716 0670

Priority Date: MAY 15, 1952

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 9.10 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT
PUT TO HISTORICAL AND BENEFICIAL USE.

PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.

Climatic Area: 5 - LOW

Maximum Acres: 240.00

Source Name: WEST GALLATIN RIVER, WEST FORK

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		SESENE	36	6S	3E	GALLATIN

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

WATER IMPOUNDED IN LITTLE COYOTE POND IS DIVERTED BY PUMP AND
CONVEYED TO THE PLACE OF USE.

***Reservoir:** ONSTREAM **Reservoir Name:** LITTLE COYOTE POND

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESENE	36	6S	3E	GALLATIN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.50 FEET

Depth: 10.00 FEET

Surface Area: 3.50 ACRES

Capacity: 18.00 ACRE-FEET

Period of Use: JUNE 1 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	100.00	SE	36	6S	3E	GALLATIN
2	100.00	SW	36	6S	3E	GALLATIN
3	35.00	S2S2NE	36	6S	3E	GALLATIN
4	5.00	SENW	36	6S	3E	GALLATIN
Total:	<u>240.00</u>					

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.

148445-00 148446-00

THE MEANS OF DIVERSION, VOLUME AND PERIOD OF DIVERSION WERE AMENDED BY THE WATER COURT PURSUANT TO SECTION 85-2-233(6), MCA.