

ELECTRONICALLY FILED

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
(406) 586-4364  
1-800-624-3270  
watercourt@mt.gov

41H-0304-R-2021

July 20, 2021

Montana Water Court

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

\*\*\*\*\*

CLAIMANT: Mammoth Ditch Company

NOTICE OF INTENT TO APPEAR: Four Corners County  
Water & Sewer District; State of Montana  
University System (MSU)

**CASE: 41H-0304-R-2021**

41H 15823-00

41H 15824-00

41H 15825-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. Because this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this Master's Report. The original objection and a certificate of mailing to all parties on the Service List must be filed with the Water Court. *If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.*

## MASTER'S REPORT

### FINDINGS OF FACT

1. Claims 41H 15823-00, 41H 15824-00, and 41H 15825-00 are owned by Mammoth Ditch Company (MDC). MDC is a water supply company and MDC's shareholders use the water described by the claims in this Case on land owned by the shareholders.

2. Claims 41H 15823-00 and 41H 15825-00 were decreed with an issue remark indicating the claims may be multiple uses of the same historical right. The claims in this Case were also decreed with the following DNRC issue remark:

A LATE OBJECTION HAS BEEN FILED TO THE PLACE OF USE AND MAXIMUM ACRES OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

3. Notices of Intent to Appear were filed by Four Corners County Water & Sewer District (Four Corners) and the State of Montana University System (MSU).

4. A deadline was set for the parties to determine if certain changes address the Late Objection, whether Claimant Mammoth Ditch Company agrees claims 41H 15823-00 and 41H 15825-00 are multiple uses, and for the Notice of Intent to Appear parties to indicate how they intend to prosecute the Notices of Intent to Appear. Regarding the Notices of Intent to Appear, the Order Setting Filing deadline indicated that if nothing was filed by the deadline, this Master would conclude the Notice of Intent to Appear parties do not intend to pursue the Notices of Intent to Appear. The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

5. On April 27, 2021, Four Corners filed a statement indicating it filed the Notices of Intent to Appear to ensure the places of use of claims 41H 15824-00 and 41H 15825-00 are not modified in a manner which could adversely affect it. Four Corners indicated that it did not object to 16.00 acres being added to the claims as discussed in the Order Consolidating and Setting Filing Deadline.

6. On June 24, 2021, MDC filed a Response to Filing Deadline and Unopposed Motions to Describe Place of Use as a Service Area and Reduce Maximum Acres to Conform to Historical Place of Use. The filing states that counsel for Four Corners and MSU do not oppose the motions.

7. Based on the record, the following changes should be made to claim 41H 15823-00:

Place of Use:

ID	Acres	Court Lot	Qtr Sec	Sec	Twp	Rge	County
1			N2	2	1N	4E	GALLATIN
2			N2	2	1N	4E	GALLATIN
3			SE	SW	5	7 1S	5E GALLATIN
4			E2	E2SW	8	1S	5E GALLATIN
5			E2		14	1S	4E GALLATIN
6					17	1S	5E GALLATIN
7					18	1S	5E GALLATIN
8					23	1S	4E GALLATIN
9			E2		24	1S	4E GALLATIN
10					25	1N	4E GALLATIN
11			E2		26	1S	4E GALLATIN
12				SW	34	1N	4E GALLATIN
13				NE	35	1S	4E GALLATIN
14				W2	36	1N	4E GALLATIN
15				W2W2	30	1N	5E GALLATIN
16				E2SW	24	1N	4E GALLATIN
17				W2SE	24	1N	4E GALLATIN
18				S2NW	24	1N	4E GALLATIN
19				SWNE	24	1N	4E GALLATIN

Additionally, a multiple use remark should be added to the claim.

8. Based on the record, the following changes should be made to claim 41H 15824-00:

Maximum Acres: 4,199.30 3,187.80

Place of Use:

ID	Acres	Court Lot	Qtr Sec	Sec	Twp	Rge	County
1	10.00		N2	2	1S	4E	GALLATIN
2	16.30		SE	SW	5	7 1S	5E GALLATIN
3	6.00		E2	E2SW	8	1S	5E GALLATIN
4	16.00		E2		14	1S	4E GALLATIN
5	33.00				17	1S	5E GALLATIN
6	48.00				18	1S	5E GALLATIN
7	64.50				23	1S	4E GALLATIN
8	32.00		E2		24	1S	4E GALLATIN
9	60.00				25	1N	4E GALLATIN
10	30.50		E2		26	1S	4E GALLATIN
11	9.50		SW	34	1N	4E	GALLATIN
12	17.50		NE	35	1S	4E	GALLATIN
13	32.00		W2	36	1N	4E	GALLATIN
14	15.00		W2W2	30	1N	5E	GALLATIN
15	8.00			E2SW	24	1N	4E GALLATIN
16	8.00			W2SE	24	1N	4E GALLATIN
17	4.00			S2NW	24	1N	4E GALLATIN
18	4.00			SWNE	24	1N	4E GALLATIN
Total:	4,199.30						

A MAXIMUM OF 3,187.80 ACRES ARE IRRIGATED WITHIN THE SERVICE AREA IN ANY ONE YEAR.

9. Based on the record, the following changes should be made to claim 41H 15825-00:

Maximum Acres:		4,199.30	3,187.80				
Place of Use:							
ID	Acres	Cont List	Qtr Sec	Sec	Trp	Rge	County
1	100.00		N2	2	1N	4E	GALLATIN
2	160.00		SE SW	5	1S	5E	GALLATIN
3	64.00		E2 SW	8	1S	5E	GALLATIN
4	180.00		E2	14	1S	4E	GALLATIN
5	330.00			17	1S	5E	GALLATIN
6	480.00			18	1S	5E	GALLATIN
7	640.00			23	1S	4E	GALLATIN
8	320.00		E2	24	1S	4E	GALLATIN
9	600.00			25	1N	4E	GALLATIN
10	300.50		E2	26	1S	4E	GALLATIN
11	90.50		SW	34	1N	4E	GALLATIN
12	170.50		NE	35	1S	4E	GALLATIN
13	320.00		W2	36	1N	4E	GALLATIN
14	150.00		W2W2	30	1N	5E	GALLATIN
15	80.00		E2SW	24	1N	4E	GALLATIN
16	80.00		W2SE	24	1N	4E	GALLATIN
17	40.00		S2NW	24	1N	4E	GALLATIN
18	40.00		SWNE	24	1N	4E	GALLATIN
Total:	4,199.30						

A MAXIMUM OF 3,187.80 ACRES ARE IRRIGATED WITHIN THE SERVICE AREA IN ANY ONE YEAR.

Additionally, a multiple use remark should be added to the claim.

### PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

4. Service areas are a useful and practical way to describe the limitations on water rights that are held by entities that do not also own the land being irrigated. *Or. Vacating Master's Order & Approving Stipulation*, Case 40J-99, p. 7 (MT Water Court, Nov. 16, 2018). As noted by the Montana Supreme Court:

[E]ntities, such as irrigation districts, state water projects, and private corporations, also may own water rights, but at the same time it is possible they do not own the land upon which the water is put to use. These entities define the relationship between the water right owner and the water user in their organization's documents (i.e., bylaws, contracts, shares of stock, etc.).

*Curry v. Pondera Cnty. Canal & Reservoir Co.*, 2016 MT 77, ¶ 41, 383 Mont. 93, 370 P.3d 440 (emphasis added); see also Stephen R. Brown, Michelle L. Bryan & Russ McElyea, *Montana Water Law*, 104–108 (Rocky Mt. Min. L. Fdn. 2021) (discussing water rights developed for third-party use, including appropriateness of a service area for water supply companies).

MDC is a water supply company and owns the rights in this Case but not the land irrigated by the rights. It is appropriate to describe MDC's place of use as a general service area.

### RECOMMENDATIONS

1. The Notices of Intent to Appear should be dismissed.
2. The claims in this Case should be changed as shown in the Findings of Fact and attached abstracts.
3. The issue remarks should be removed from the claims.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that terms of the claims in the DNRC's water rights database.

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Anika M. Stern  
Senior Water Master

**Service Via Electronic Mail:**

Abigail R. Brown  
ARB Law Group  
PO Box 1182  
Helena, MT 59624  
(406) 457-5494  
office@mtwaterlaw.com  
[abby@mtwaterlaw.com](mailto:abby@mtwaterlaw.com)

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

**Service via USPS Mail:**

Kellie A Peterson  
PO Box 172420  
Bozeman, MT 59717  
406-994-4570  
kellie.peterson@montana.edu

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

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

**Water Right Number:** 41H 15823-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MAMMOTH DITCH CO  
PO BOX 312  
BELGRADE, MT 59714

**Priority Date:** JUNE 1, 1866

**Type of Historical Right:** USE

**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:** 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		NESWSW	2	2S	4E	GALLATIN

**Period of Diversion:** APRIL 1 TO OCTOBER 31

**Diversion Means:** HEADGATE

**Ditch Name:** MAMMOTH 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			SE	5	1S	5E	GALLATIN
2			E2	8	1S	5E	GALLATIN
3			E2	14	1S	4E	GALLATIN
4				17	1S	5E	GALLATIN
5				18	1S	5E	GALLATIN
6				23	1S	4E	GALLATIN
7			E2	24	1S	4E	GALLATIN
8				25	1N	4E	GALLATIN
9			E2	26	1S	4E	GALLATIN
10			SW	34	1N	4E	GALLATIN
11			NE	35	1S	4E	GALLATIN

12	W2	36	1N	4E	GALLATIN
13	W2W2	30	1N	5E	GALLATIN

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**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.

15823-00      15825-00



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

**Water Right Number:**      **41H 15824-00**      STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:** ACTIVE

**Owners:**                      MAMMOTH DITCH CO  
                                     PO BOX 312  
                                     BELGRADE, MT 59714

**Priority Date:**              MAY 31, 1884

**Type of Historical Right:**      DECREED

**Purpose (Use):**                IRRIGATION

**Irrigation Type:**            SPRINKLER/FLOOD

**Flow Rate:**                 14.48 CFS

COMBINED FLOW RATE FOR CLAIMS NO. 41H 15824-00, 41H 15825-00 IS LIMITED TO THE HISTORIC CAPACITY OF THE DIVERSION STRUCTURE AND THE CONVEYANCE SYSTEM.

**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:**            3,187.80

**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		NESWSW	2	2S	4E	GALLATIN

**Period of Diversion:**      APRIL 1 TO OCTOBER 31

**Diversion Means:**         HEADGATE

**Ditch Name:**               MAMMOTH 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			SE	5	1S	5E	GALLATIN
2			E2	8	1S	5E	GALLATIN
3			E2	14	1S	4E	GALLATIN
4				17	1S	5E	GALLATIN
5				18	1S	5E	GALLATIN
6				23	1S	4E	GALLATIN
7			E2	24	1S	4E	GALLATIN
8				25	1N	4E	GALLATIN
9			E2	26	1S	4E	GALLATIN

10	SW	34	1N	4E	GALLATIN
11	NE	35	1S	4E	GALLATIN
12	W2	36	1N	4E	GALLATIN
13	W2W2	30	1N	5E	GALLATIN

A MAXIMUM OF 3187.8 ACRES ARE IRRIGATED WITHIN THE SERVICE AREA IN ANY ONE YEAR.

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

**Water Right Number:** 41H 15825-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MAMMOTH DITCH CO  
PO BOX 312  
BELGRADE, MT 59714

**Priority Date:** JUNE 1, 1866

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 59.03 CFS

COMBINED FLOW RATE FOR CLAIMS NO. 41H 15824-00, 41H 15825-00 IS LIMITED TO THE HISTORIC CAPACITY OF THE DIVERSION STRUCTURE AND THE CONVEYANCE SYSTEM.

**\*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:** 3,187.80

**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		NESWSW	2	2S	4E	GALLATIN

**Period of Diversion:** APRIL 1 TO OCTOBER 31

**Diversion Means:** HEADGATE

**Ditch Name:** MAMMOTH 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			SE	5	1S	5E	GALLATIN
2			E2	8	1S	5E	GALLATIN
3			E2	14	1S	4E	GALLATIN
4				17	1S	5E	GALLATIN
5				18	1S	5E	GALLATIN
6				23	1S	4E	GALLATIN
7			E2	24	1S	4E	GALLATIN
8				25	1N	4E	GALLATIN
9			E2	26	1S	4E	GALLATIN

10	SW	34	1N	4E	GALLATIN
11	NE	35	1S	4E	GALLATIN
12	W2	36	1N	4E	GALLATIN
13	W2W2	30	1N	5E	GALLATIN

A MAXIMUM OF 3187.8 ACRES ARE IRRIGATED WITHIN THE SERVICE AREA IN ANY ONE YEAR.

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**Remarks:**

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15823-00

15825-00