

41H-0199-R-2020

September 1, 2021

Montana Water Court

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

\* \* \* \* \*

CLAIMANT: Cowan & Skinner Ranch Co.; Mark E. Soares;  
Patricia J. Soares

OBJECTORS: Mark E. Soares; Patricia J. Soares

**CASE 41H-0199-R-2020**  
41H 25615-00  
41H 154111-00  
41H 154112-00  
**41H 30151595**

**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 right claim 41H 25615-00, owned by Cowan & Skinner Ranch Co, appeared in the Preliminary Decree for the Gallatin River (Basin 41H) with issue remarks from the

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

The claim received a May 8, 2019 objection from Mark and Patricia Soares, through counsel Breeann Johnson, to all elements of the water right claim. The objection states: "Place of use needs to be corrected to show proper ownership of the claim; claim may need to be split between differing owners."

The Water Court consolidated the claim into Water Court case 41H-0199-R-2020 and held a January 6, 2021 status conference attended by Breeann Johnson, Patricia Soares, Bill Skinner, and Joe Skinner to discuss the objection. Johnson requested water rights claims 41H 154111-00 and 41H 154112-00, owned by the Soares, be re-consolidated into Water Court case 41H-0199-R-2020 to resolve the interrelated place of use and non-conforming ownership issues. Accordingly, the Water Court re-consolidated the case to include water rights claims 41H 154111-00 and 41H 154112-00 and set a new filing deadline for the parties to work together to resolve the issues. The Soares filed timely objections to all elements of water rights claim 41H 154111-00 and 41H 154112-00.

On April 9, 2021, the parties filed a Stipulation Settling Claims with the court requesting a split in ownership of water right claim 41H 25615-00 and other modifications resolving the issues. On July 15, 2021, the Soares filed a Deeds of Distribution with the court.

The Water Court presently resolves the issues in this case.

### ISSUES

1. *Whether the Water Court approves the stipulation filed by the parties.*
  - a. *Whether the Water Court should split water right 41H 25615-00 consistent with the Stipulation Settling Claims.*
  - b. *Whether a preponderance of the evidence supports modifying the place of use associated with water right claim 41H 154112-00.*
  - c. *Whether Mark, Patricia, and Dorothy Soares and James E. Soares Testamentary Trust co-own water rights claims 41H 154112-00 and 41H 30151595.*

### 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.

The Water Court may split a water right into separate claims, by request or on its own initiative, at any time prior to the entry of the final decree. Rule 26, W.R.Adj.R. A split does not increase any element of an original water right, but serves to accurately reflect the current proportional ownership of the claimed acres irrigated, place of use, volume, and flow rate. Accordingly, a split does not have the potential to adversely affect other water users' water rights and does not trigger additional notice pursuant to § 85-2-233(6), MCA, MCA. *Circle S Ranch, Inc.*, 2019 Mont. Water LEXIS 8 at \*\* 4-5. Remarks identifying that a division of a claim occurred may be added to the claims. Rule 26, W.R.Adj.R.

### DISCUSSION

1. *Whether the Water Court approves the stipulation filed by the parties.*
  - a. *Whether the Water Court should split water right 41H 25615-00 consistent with the Stipulation Settling Claims.*

Pursuant to the Stipulation Settling Claims, the parties requested the Water Court to split the flow rate for water right claim 41H 25615-00 "to reflect the separate ownership interests between Cowan & Skinner and Soares and their respective points of diversion."

Water right claim 41H 25615-00 is a filed sprinkler/flood-irrigation claim for surface water from Smith Creek, diverted by two separate points of diversion in Gallatin County, Montana. The originally claimed flow rate associated with the water right claim is 5 cubic-feet-per-second (CFS) for use on 305 maximum acres. The Stipulation Settling Claims indicates Cowan & Skinner Ranch Co. would like to retain 3 CFS of the originally claimed flow rate for use on 80 acres in the W2SE of Section 2, Township 1N, Range 4E, Gallatin County, 65 acres in the E2SW of Section 2, Township 1N, Range 4E, Gallatin County, 20 acres in the W2SW of Section 2, Township 1N, Range 4E, Gallatin County, and 30 acres in the SWNE of Section 2, Township 1N, Range 4E, Gallatin County, totaling 195 maximum acres in Gallatin County. The Stipulation Settling Claims

further indicates the point of diversion associated with the portion of the water right and property owned by Cowan & Skinner Ranch Co. is the “PUMP/HEADGATE W/DITCH OR PIPELINE” in the NWSESE of Section 2, Township 1N, Range 4E, Gallatin County.

The Stipulation Settling Claims indicates Mark, Patricia, and Dorothy Soares and the James E. Soares Testamentary Trust would like to retain 2 CFS of the originally claimed flow rate for use on 70 acres in the E2SE of Section 2, Township 1N, Range 4E, Gallatin County, and 40 acres in the W2SW of Section 1, Township 1N, Range 4E, Gallatin County, totaling 110 maximum acres in Gallatin County. The Stipulation Settling Claims further indicates the point of diversion associated with the portion of the water right and property owned by the Soares is the “PUMP/HEADGATE” in the SESWSW of Section 1, Township 1N, Range 4E, Gallatin County. Because “PUMP/HEADGATE” is not an option within DNRC’s water rights database, the Water Court reflects the means of diversion as “PUMP/HEADGATE W/DITCH OR PIPELINE.”

The map attached to the Stipulation Settling Claims map depicts the places of use currently owned by each party. The information provided by the parties is complete and sufficient to accurately split the flow rate between the parties and their respective places of use as requested. The Water Court therefore generates claim 41H 30151595, splitting the originally claimed flow rate between the claims as outlined in the Stipulation Settling Claims. The post-decree abstracts for the parent and child claims will reflect the following owners, flow rates, points of diversion, maximum acres, and places of use consistent with current ownership, as well as information remarks indicating the court authorized the split:

**Claim 41H 25615-00 (parent)**

Owner: **Cowan & Skinner Ranch Co.**

Flow Rate: **3 CFS**

Maximum Acres: **195.00**

Point of Diversion:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWSESE	2	1N	4E	GALLATIN

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
<b>1</b>	<b>80.00</b>		<b>W2SE</b>	<b>2</b>	<b>1N</b>	<b>4E</b>	<b>GALLATIN</b>
<b>2</b>	<b>65.00</b>		<b>E2SW</b>	<b>2</b>	<b>1N</b>	<b>4E</b>	<b>GALLATIN</b>
<b>3</b>	<b>20.00</b>		<b>W2SW</b>	<b>2</b>	<b>1N</b>	<b>4E</b>	<b>GALLATIN</b>
<b>4</b>	<b>30.00</b>		<b>SWNE</b>	<b>2</b>	<b>1N</b>	<b>4E</b>	<b>GALLATIN</b>

**Total: 195.00**

Remarks:

**SPLIT CLAIM NO. 41H 30151595 WAS AUTHORIZED AND GENERATED**

**BASED ON INFORMATION IN THIS CLAIM.**

**Claim 41H 30151595 (child)**

Owner: **Mark Soares**

**Patricia Soares**

**Dorothy Soares**

**James E. Soares Testamentary Trust**

Flow Rate: **2 CFS**

Maximum Acres: **110.00**

Point of Diversion:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESWSW	1	1N	4E	GALLATIN

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
<b>1</b>	<b>70.00</b>		<b>E2SE</b>	<b>2</b>	<b>1N</b>	<b>4E</b>	<b>GALLATIN</b>
<b>2</b>	<b>40.00</b>		<b>W2SW</b>	<b>1</b>	<b>1N</b>	<b>4E</b>	<b>GALLATIN</b>

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**Total: 110.00**

Remarks:

**THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT  
BASED ON INFORMATION IN CLAIM NO. 41H 25615-00.**

Elements not addressed by this Water Master's Report will remain unchanged and will appear identical between the parent and child claims. The requested split resolves the claim's place-of-use issue remark received by the water right claim. The issue remark is hereby removed.

*b. Whether a preponderance of the evidence supports modifying the place of use associated with water right claim 41H 154112-00.*

Water right claim 41H 154112-00 is a stock-use claim for surface water from Smith Creek in Gallatin County, Montana. The claim's decree abstract currently indicates cows drink from Smith Creek in the NW of Section 12, Township 1N, Range 4E, Gallatin County.

The Stipulation Settling Claims states the claim's place of use:

should be corrected to add the entire reach of Smith Creek where stock have historically watered from the source. Smith Creek flows in a northwesterly direction through the property owned by Mark and Patricia Soares and the property co-owned by Dorothy Soares and the James E. Soares Testamentary Trust. These properties have historically been used for cattle grazing and Smith Creek is the primary source of water for livestock on the properties.

Specifically, the Soares request the court to add legal land descriptions to the claim's decree abstract to reflect that stock additionally drink from Smith Creek in the SWSW of Section 1, and in the E2SW of Section 2, Township 1N, Range 4E, Gallatin County. The parties attached a map depicting the reach of Smith Creek where stock historically watered on the Soares properties.

A preponderance of the evidence supports adding Place of Use ID Nos. 2 and 3 to the decree abstract for the water right claim to reflect stock historically drank from Smith Creek in the SWSW of Section 1, and in the E2SW of Section 2, Township 1N, Range 4E, Gallatin County.

*c. Whether Mark, Patricia, and Dorothy Soares and James E. Soares Testamentary Trust co-own water rights claims 41H 154112-00 and 41H 30151595.*

The Stipulation Settling Claims indicates Mark, Patricia, and Dorothy Soares and the James E. Soares Testamentary Trust co-own water rights claims 41H 154112-00 and 41H 30151595 and requests the Water Court to update ownership accordingly. The DNRC water rights database does not currently indicate Dorothy Soares or the James E. Soares Testamentary Trust co-own the parent water right claim. However, the Soares filed an April 13, 2009 Deed of Distribution evidencing ownership as requested as a matter of law. The court updates ownership accordingly.

In sum, 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. The Water Court approves the Stipulation and Agreement filed by the parties, splits ownership of water right claim 41H 25615-00, modifies the place of use for water right claim 41H 154112-00, and updates ownership of water right claim 41H 154112-00.

### RECOMMENDATIONS

This Water Master recommends the Water Court to remove the resolved issue remarks appearing on the claims, to modify the place of use for water right claim 41H 154112-00, to split water right claim 41H 25615-00 by generating child claim 41H 30151595, and to update ownership of water right claim 41H 154112-00 and 41H

30151595, consistent with the findings of fact and conclusions of law in the discussion section above.

Attached to this Master's Report are post decree abstracts for the water rights claims, as well as the Stipulation Settling Claims filed by the parties.

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Kirsa Shelkey  
Water Master  
*she/her/hers*

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

**Water Right Number:** 41H 25615-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** COWAN & SKINNER RANCH CO  
100 W DRY CREEK RD  
BELGRADE, MT 59714 8105

**Priority Date:** MAY 23, 1884

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION  
**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 3.00 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:** 195.00

**Source Name:** SMITH 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		NWSESE	2	1N	4E	GALLATIN

**Period of Diversion:** MAY 15 TO SEPTEMBER 30

**Diversion Means:** PUMP/HEADGATE W/DITCH OR PIPELINE

**Period of Use:** MAY 15 TO SEPTEMBER 30

**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	80.00		W2SE	2	1N	4E	GALLATIN
2	65.00		E2SW	2	1N	4E	GALLATIN
3	20.00		W2SW	2	1N	4E	GALLATIN
4	30.00		SWNE	2	1N	4E	GALLATIN
<b>Total:</b>	195.00						

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**Remarks:**

SPLIT CLAIM NO. 41H 30151595 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

**Water Right Number:**      **41H 154111-00**      STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:** ACTIVE

**Owners:**                      MARK E SOARES  
   7735 DRY CREEK RD  
   BELGRADE, MT 59714 8125

PATRICIA J SOARES  
7735 DRY CREEK RD  
BELGRADE, MT 59714 8125

**Priority Date:**                      MAY 1, 1940

**Type of Historical Right:**      USE

**Purpose (Use):**                      IRRIGATION

**Irrigation Type:**                  SPRINKLER

**Flow Rate:**                        256.00 GPM

**Volume:**                          10.00 AC-FT

**Climatic Area:**                  4 - MODERATELY LOW

**Maximum Acres:**                15.00

**Source Name:**                    SMITH 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		NWNENW	12	1N	4E	GALLATIN

**Period of Diversion:**      MAY 1 TO NOVEMBER 1

**Diversion Means:**              PUMP

**Period of Use:**                    MAY 1 TO NOVEMBER 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	4.00		S2S2SW	1	1N	4E	GALLATIN
2	11.00		N2N2NW	12	1N	4E	GALLATIN
<b>Total:</b>	15.00						

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

**Water Right Number:** 41H 154112-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** DOROTHY L SOARES  
7093 DRY CREEK RD  
BELGRADE, MT 59714 8124

MARK E SOARES  
7735 DRY CREEK RD  
BELGRADE, MT 59714 8125

PATRICIA J SOARES  
7735 DRY CREEK RD  
BELGRADE, MT 59714 8125

SOARES, JAMES E TESTMENTARY TRUST  
DOROTHY L SOARES, TRUSTEE  
7093 DRY CREEK RD  
BELGRADE, MT 59714 8124

**Priority Date:** DECEMBER 31, 1900

**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:** SMITH 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		N2N2NW	12	1N	4E	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			NW	12	1N	4E	GALLATIN
2			SWSW	1	1N	4E	GALLATIN
3			E2SE	2	1N	4E	GALLATIN



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

**Water Right Number:** 41H 30151595 STATEMENT OF CLAIM

**Version:** 1 -- ORIGINAL RIGHT

**Status:** ACTIVE

**Owners:** DOROTHY L SOARES  
7093 DRY CREEK RD  
BELGRADE, MT 59714 8124

MARK E SOARES  
7735 DRY CREEK RD  
BELGRADE, MT 59714 8125

PATRICIA J SOARES  
7735 DRY CREEK RD  
BELGRADE, MT 59714 8125

SOARES, JAMES E TESTMENTARY TRUST  
DOROTHY L SOARES, TRUSTEE  
7093 DRY CREEK RD  
BELGRADE, MT 59714 8124

**Priority Date:** MAY 23, 1884

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 2.00 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:** 110.00

**Source Name:** SMITH 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		SESWW	1	1N	4E	GALLATIN

**Period of Diversion:** MAY 15 TO SEPTEMBER 30

**Diversion Means:** PUMP/HEADGATE W/DITCH OR PIPELINE

**Period of Use:** MAY 15 TO SEPTEMBER 30

**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	70.00		E2SE	2	1N	4E	GALLATIN
2	40.00		W2SW	1	1N	4E	GALLATIN
<b>Total:</b>	110.00						

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**Remarks:**

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41H 25615-00.

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41H-0199-R-2020

April 9, 2021

Montana Water Court

*Attorneys for Soares*

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

**CLAIMANTS:** Cowan & Skinner Ranch Co.; Mark E. Soares;  
Patricia J. Soares

**OBJECTORS:** Mark E. Soares; Patricia J. Soares

**CASE 41H-0199-R-2020**

41H 25615-00

41H 154111-00

41H 154112-00

**STIPULATION SETTLING CLAIMS**

This Stipulation is entered by Claimants, Cowan & Skinner Ranch Co. (Cowan & Skinner), and Claimants/ Objectors, Mark E. and Patricia J. Soares (Soares) (collectively the Parties), by and through their undersigned attorneys and representatives.

**RECITALS**

- A. Pursuant to Mont. Code Ann. § 85-2-221, Cowan & Skinner properly filed a statement of claim for water right Claim No. 41H 25615-00 with the Department of Natural Resources and Conservation (DNRC).
- B. Pursuant to Mont. Code Ann. § 85-2-221, Soares properly filed statements of claim for water right Claim Nos. 41H 154111-00 and 41H 154112-00 with the Department DNRC.

- C. Pursuant to Mont. Code Ann. § 85-2-233, Soares timely filed Objections to Claim Nos. 41H 25615-00, 41H 154111-00, and 41H 154112-00.
- D. **Claim 41H 25615-00** is a filed right for irrigation of a total of 305.00 acres of land owned by Cowan & Skinner and Soares.
- E. **Claim 41H 154111-00** is a use right for irrigation of fifteen acres on the Soares property.
- F. **Claim 41H 154112-00** is a use right for stock drinking directly from the source, Smith Creek.
- 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 25615-00** should be split to reflect the separate ownership interests between Cowan & Skinner and Soares and their respective points of diversion. **Exhibit A** is the proposed revised abstract for Claim 41H 25615-00; **Exhibit B** is the proposed abstract for Claim 30XXXXXX (*Claim 41H 25615-00 child claim*); and, **Exhibit C** is a map showing the amended places of use for Claims 41H 25615-00 and 30XXXXXX (*Claim 41H 25615-00 child claim*). Elements not addressed below should remain unchanged or be the same as the parent claim.

#### **41H 25615-00**

Owners: Cowan & Skinner Ranch Co.

Flow Rate: ~~5.00 CFS~~ **3.00 CFS**



Maximum Acres: ~~305.00~~ 195.00

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		SESWSW	1	1N	4E	GALLATIN
Period of Diversion:			MAY 15 TO SEPTEMBER 30			
Diversion Means:			HEADGATE			

2		NWSESE	2	1N	4E	GALLATIN
Period of Diversion:			MAY 15 TO SEPTEMBER 30			
Diversion Means:			PUMP/ HEADGATE W/DITCH OR PIPELINE			

3		SESWSW	1	1N	4E	GALLATIN
Period of Diversion:			MAY 15 TO SEPTEMBER 30			
Diversion Means:			PUMP/ HEADGATE W/DITCH OR PIPELINE			

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	<del>150.00</del>		SE	2	1N	4E	GALLATIN
	80.00		W2SE	2	1N	4E	GALLATIN
2	65.00		E2SW	2	1N	4E	GALLATIN
3	20.00		W2SW	2	1N	4E	GALLATIN
4	30.00		SWNE	2	1N	4E	GALLATIN
5	<del>40.00</del>		W2SW	1	1N	4E	GALLATIN
TOTAL: <del>305.00</del>		<u>195.00</u>					

Associated Geocodes: 06-1010-02-3-01-01-0000

41H 30XXXXXX (41H 25615-00 child claim)

Owners: MARK E. SOARES  
7735 DRY CREEK RD  
BELGRADE, MT 59714-8125

PATRICIA J. SOARES  
7735 DRY CREEK RD  
BELGRADE, MT 59714-8125

DOROTHY L. SOARES  
7093 DRY CREEK RD  
BELGRADE, MT 59714-8124

JAMES E. SOARES TESTAMENTARY TRUST  
7093 DRY CREEK RD  
BELGRADE, MT 59714-8124

Flow Rate: ~~5.00 CFS~~ 2.00 CFS

Maximum Acres: ~~305.00~~ 110.00

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		SESWSW	1	1N	4E	GALLATIN
Period of Diversion:			MAY 15 TO SEPTEMBER 30			
Diversion Means:			HEADGATE			

<del>2</del>	<del></del>	<del>NWSESE</del>	<del>2</del>	<del>1N</del>	<del>4E</del>	<del>GALLATIN</del>
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<del>Period of Diversion:</del>			<del>MAY 15 TO SEPTEMBER 30</del>			
<del>Diversion Means:</del>			<del>PUMP/ HEADGATE W/DITCH OR PIPELINE</del>			

<del>3</del>	<del></del>	<del>SESWSW</del>	<del>1</del>	<del>1N</del>	<del>4E</del>	<del>GALLATIN</del>
--------------	-------------	-------------------	--------------	---------------	---------------	---------------------

<del>Period of Diversion:</del>			<del>MAY 15 TO SEPTEMBER 30</del>			
<del>Diversion Means:</del>			<del>PUMP/ HEADGATE W/DITCH OR PIPELINE</del>			

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	<del>150.00</del>		SE	2	1N	4E	GALLATIN
	70.00		E2SE	2	1N	4E	GALLATIN
2	<del>65.00</del>		E2SW	2	1N	4E	GALLATIN
3	<del>20.00</del>		W2SW	2	1N	4E	GALLATIN
4	<del>30.00</del>		SWNE	2	1N	4E	GALLATIN
5	40.00		W2SW	1	1N	4E	GALLATIN
TOTAL: <del>305.00</del>		<u>110.00</u>					

Associated Geocodes:

06-1010-01-3-02-07-0000	06-1010-01-3-30-01-0000
06-1010-01-3-02-05-0000	06-1010-02-4-01-83-0000
06-1010-02-4-01-01-0000	

2. **Claim 41H 154111-00** requires no changes. The POU for this claim is entirely owned by Mark and Patricia Soares. However, a Geocode for POU ID 1 is missing in DNRC's records. Geocode 06-1010-01-3-02-05-0000 should also appear on the face of the claim. A Proposed Corrected Abstract for this claim is attached as **Exhibit D**.
  
3. **Claim 41H 154112-00** should be corrected to add the entire reach of Smith Creek where stock have historically watered from the source. Smith Creek flows in a northwesterly direction through the property owned by Mark and Patricia Soares and the property co-owned by Dorothy Soares and the James E. Soares Testamentary Trust. These properties have historically been used for cattle grazing and Smith Creek is the primary source of water for livestock on the properties. A map showing the Smith Creek reach where stock water is attached hereto as **Exhibit E**. Therefore, this claim should reflect the following changes:

- a. Ownership should be updated to add:

Dorothy L. Soares  
 7093 Dry Creek Rd.  
 Belgrade, MT 59714-8124

James E. Soares Testamentary Trust  
 7093 Dry Creek Rd.  
 Belgrade, MT 59714-8124


- b. The POU should include the following additional IDs:

<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>
2			SWSW	1	1N	4E	GALLATIN
Geocode: 06-1010-01-3-30-01-0000							
3			E2SE	2	1N	4E	GALLATIN
Geocodes: 06-1010-02-4-01-01-0000 and 06-1010-02-4-01-83-0000							


- c. All other elements of this claim will remain as they appear in the Preliminary Decree.

**Exhibit F** is the proposed revised abstract for Claim 41H 154112-00.

4. Upon the Montana Water Court's acceptance and entry of this Stipulation, the Soares objections shall be deemed resolved and withdrawn.
5. The Parties agree that the changes to Claim Nos. 41H 25615-00, 41H 154111-00, and 41H 154112-00, as specified above, are legally and factually warranted and should be reflected in the entry of the Final Decree for Basin 41H.
6. 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.
7. 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-0199-R-2020.
8. This Stipulation is binding on the heirs, successors and assigns, representatives, and agents of the parties.
9. The parties hereto represent and affirm the signatories to this Stipulation are legally authorized to bind the parties in this matter.
10. This Stipulation may be signed in counterparts, all of which together shall constitute one and the same instrument. Facsimile or electronic copies of signatures will be deemed the equivalent of original signatures.

  
BREEANN M. JOHNSON  
WESTERN ROOT LAW PLLC  
PO Box 1432  
BELGRADE, MT 59714  
Johnson@WestRootsLaw.com  
*Attorney for Soares*

4-7-21  
DATE

  
MARK E. SOARES

4-6-2021  
DATE

  
PATRICIA J. SOARES

4-6-2021  
DATE

~~WILLIAM SKINNER, AUTHORIZED REPRESENTATIVE~~  
COWAN & SKINNER RANCH CO.

\_\_\_\_\_  
DATE

Cowan & Skinner Ranch Co. Signature on Next Page

\_\_\_\_\_  
BREEANN M. JOHNSON  
WESTERN ROOT LAW PLLC  
PO Box 1432  
BELGRADE, MT 59714  
Johnson@WestRootsLaw.com  
*Attorney for Soares*

\_\_\_\_\_  
DATE

\_\_\_\_\_  
MARK E. SOARES

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PATRICIA J. SOARES

\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
JOE SKINNER, PRESIDENT  
COWAN & SKINNER RANCH CO.

4/8/2021  
DATE

## CERTIFICATE OF SERVICE

I hereby certify that on this 9<sup>th</sup> day of April, 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: <a href="mailto:watercourt@mt.gov">watercourt@mt.gov</a> <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:
William and Joe Skinner Cowan & Skinner Ranch Co. 100 W. Dry Creek Rd. Belgrade, MT 59714	X U.S. First-Class Mail, Postage Prepaid X Email: <a href="mailto:skinnerpuds@gmail.com">skinnerpuds@gmail.com</a> ; <a href="mailto:joeandjoioskinner@gmail.com">joeandjoioskinner@gmail.com</a> <input type="checkbox"/> Hand Delivery: <input type="checkbox"/> Other:

/s/ Breeann M. Johnson  
Breeann M. Johnson

STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
1424 9TH AVENUE P.O.BOX 201601 HELENA, MONTANA 59620-1601

EXHIBIT A

PROPOSED REVISED ABSTRACT

Water Right Number: 41H 25615-00 STATEMENT OF CLAIM  
Version: 2 -- REEXAMINED  
Version Status: ACTIVE

Owners: COWAN & SKINNER RANCH CO  
100 W DRY CREEK RD  
BELGRADE, MT 59714-8105

Priority Date: MAY 23, 1884  
Enforceable Priority Date: MAY 23, 1884

Type of Historical Right: FILED

Purpose (use): IRRIGATION  
Irrigation Type: SPRINKLER/FLOOD

Maximum Flow Rate: ~~5.00 CFS~~ 3.00 CFS

Maximum 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: ~~305.00~~ 195.00

Source Name: SMITH CREEK  
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
<del>1</del>		<del>SESWW</del>	<del>1</del>	<del>1N</del>	<del>4E</del>	<del>GALLATIN</del>
<del>Period of Diversion: MAY 15 TO SEPTEMBER 30</del>						
<del>Diversion Means: HEADGATE</del>						
2		NWSESE	2	1N	4E	GALLATIN
Period of Diversion: MAY 15 TO SEPTEMBER 30						
Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE						
<del>3</del>		<del>SESWW</del>	<del>1</del>	<del>1N</del>	<del>4E</del>	<del>GALLATIN</del>
<del>Period of Diversion: MAY 15 TO SEPTEMBER 30</del>						
<del>Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE</del>						

Period of Use: MAY 15 to SEPTEMBER 30

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	<del>150.00</del> 80.00		<del>W2SE</del> SE	2	1N	4E	GALLATIN
2	65.00		E2SW	2	1N	4E	GALLATIN
3	20.00		W2SW	2	1N	4E	GALLATIN
4	30.00		SWNE	2	1N	4E	GALLATIN
<del>5</del>	<del>40.00</del>		<del>W2SW</del>	<del>1</del>	<del>1N</del>	<del>4E</del>	<del>GALLATIN</del>
Total:	<del>305.00</del> 195.00						

Geocodes/Valid:

<del>06-1010-01-3-02-07-0000</del> Y	<del>06-1010-01-3-30-01-0000</del> - Y
06-1010-02-3-01-01-0000 - Y	<del>06-1010-02-4-01-01-0000</del> - Y
<del>06-1010-02-4-01-83-0000</del> - Y	

Remarks:

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

THE PLACE OF USE OF THIS RIGHT WAS ALSO CLAIMED BY THE CLAIMANT OF FILE NO. W154111-00.  
THE WATER COURT DECREES THIS RIGHT AND MAKES BOTH CLAIMS A MATTER OF RECORD



STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
1424 9<sup>TH</sup> AVENUE P.O. BOX 201601 HELENA, MONTANA 59620

**EXHIBIT B****PROPOSED ABSTRACT**

**Water Right Number:** 41H 30xxxxxx (41H 25615-00 *Child Claim*)      **STATEMENT OF CLAIM**  
**Version:** 2 – REEXAMINED  
**Version Status:** ACTIVE

**Owners:** MARK E. SOARES  
7735 DRY CREEK RD  
BELGRADE, MT 59714-8125

PATRICIA J. SOARES  
7735 DRY CREEK RD  
BELGRADE, MT 59714-8125

DOROTHY L. SOARES  
7093 DRY CREEK RD  
BELGRADE, MT 59714-8124

JAMES E. SOARES TESTAMENTARY TRUST  
7093 DRY CREEK RD  
BELGRADE, MT 59714-8124

**Priority Date:** MAY 23, 1884

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION  
**Irrigation Type:** SPRINKLER/ FLOOD

**Flow Rate:** 2.00 CFS  
**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT  
PUT TO HISTORICAL BENEFICIAL USE  
**Climatic Area:** 4 – MODERATELY LOW

**Maximum Acres:** 110.00

**Source Name:** SMITH CREEK  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

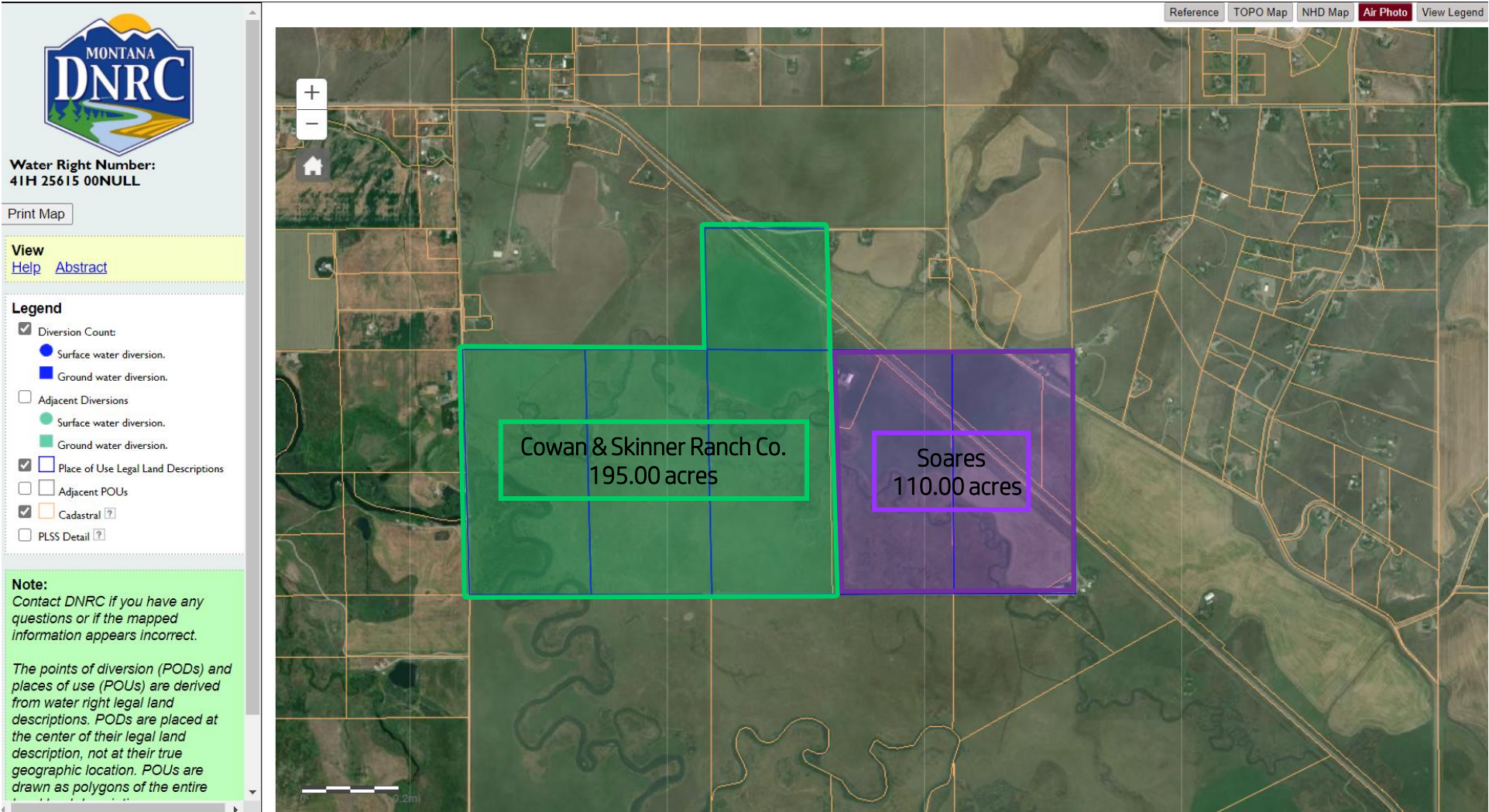
<u>ID</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWSW	1	1N	4E	GALLATIN
<b>Period of Diversion:</b>		MAY 15 TO SEPTEMBER 30				
<b>Diversion Means:</b>		PUMP/ HEADGATE				

**Period of Use:** MAY 15 TO SEPTEMBER 30

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	70.00		E2SE	2	1N	4E	GALLATIN
2	40.00		W2SW	1	1N	4E	GALLATIN
<b>Total:</b>	110.00						

<b>Geocodes/ Valid:</b>	06-1010-01-3-02-07-0000	06-1010-01-3-30-01-0000
	06-1010-02-4-01-01-0000	06-1010-02-4-01-83-0000



STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
1424 9TH AVENUE P.O.BOX 201601 HELENA, MONTANA 59620-1601

EXHIBIT D

PROPOSED CORRECTED ABSTRACT

Water Right Number: 41H 154111-00 STATEMENT OF CLAIM  
Version: 2 -- REEXAMINED

Version Status: ACTIVE

Owners: MARK E SOARES  
7735 DRY CREEK RD  
BELGRADE, MT 59714-8125  
  
PATRICIA J SOARES  
7735 DRY CREEK RD  
BELGRADE, MT 59714-8125

Priority Date: MAY 1, 1940

Enforceable Priority Date: MAY 1, 1940

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Maximum Flow Rate: 256.00 GPM

Maximum Volume: 10.00 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 15.00

Source Name: SMITH 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		NWNENW	12	1N	4E	GALLATIN

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: PUMP

Period of Use: MAY 1 to NOVEMBER 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	4.00		S2S2SW	1	1N	4E	GALLATIN
2	11.00		N2N2NW	12	1N	4E	GALLATIN
Total:	15.00						

Geocodes/Valid: 06-1010-01-3-02-07-0000 - Y ADD: 06-1010-01-3-02-05-0000

Remarks:

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

OWNERSHIP UPDATE RECEIVED

OWNERSHIP UPDATE TYPE DOR # 78339 RECEIVED 11/06/2008.

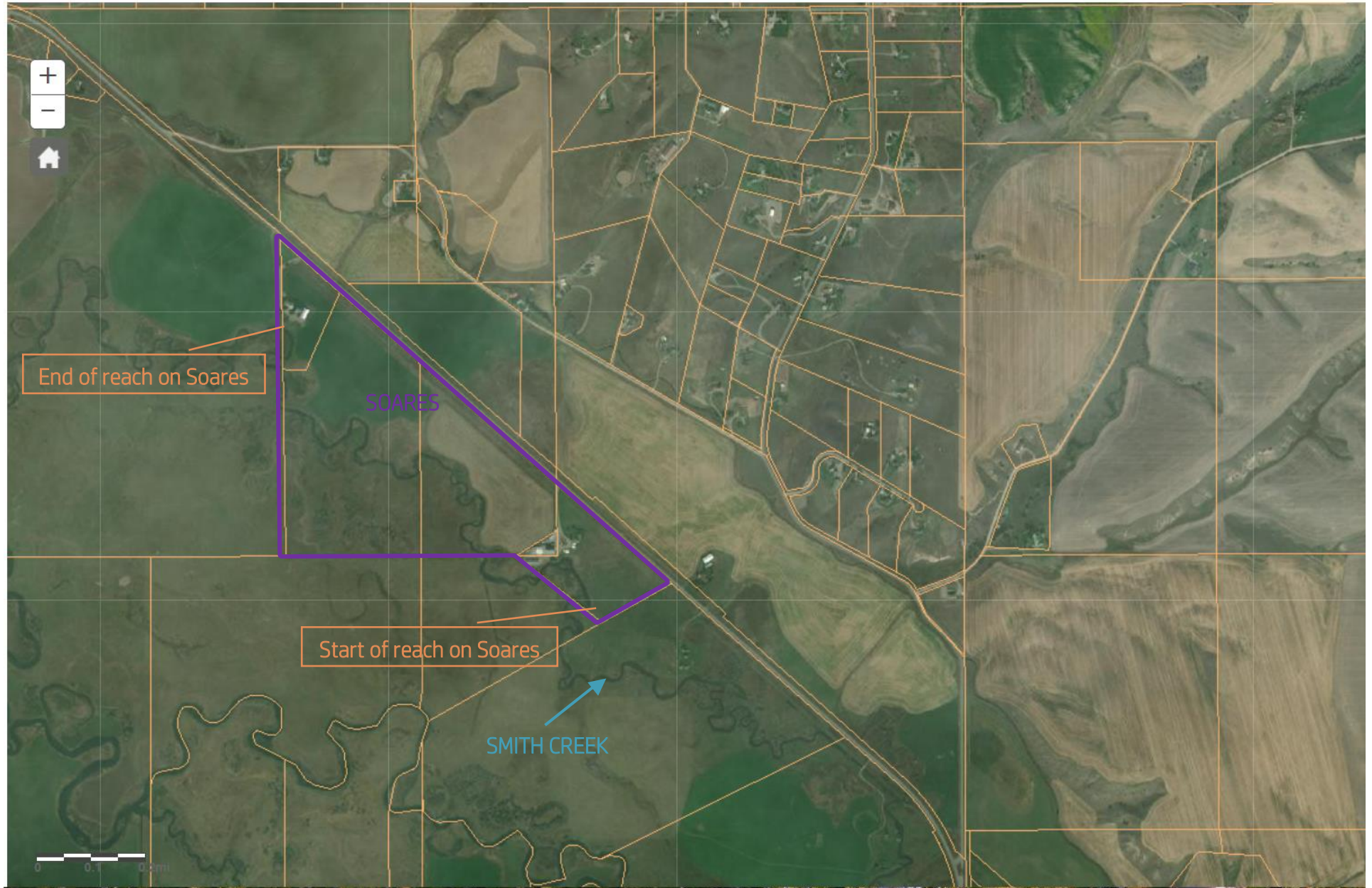
THE PLACE OF USE OF THIS RIGHT WAS ALSO CLAIMED BY THE CLAIMANT OF FILE NO. 41H 25615-00.  
THE WATER COURT DECREES THIS RIGHT AND MAKES BOTH CLAIMS A MATTER OF RECORD.



Claim 41H 154112-00

**EXHIBIT E**

Reach of Smith Creek where stock water on Soares Properties  
Sections 1 and 2, Twp 1N, Rge 4E, Gallatin County



STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
1424 9TH AVENUE P.O.BOX 201601 HELENA, MONTANA 59620-1601

EXHIBIT F

PROPOSED REVISED ABSTRACT

Water Right Number: 41H 154112-00 STATEMENT OF CLAIM  
Version: 2 -- REEXAMINED

Version Status: ACTIVE

Owners: PATRICIA J SOARES  
7735 DRY CREEK RD  
BELGRADE, MT 59714-8125  
  
MARK E SOARES  
7735 DRY CREEK RD  
BELGRADE, MT 59714-8125

Add Owners:  
Dorothy L. Soares  
7093 Dry Creek Rd  
Belgrade, MT 59714-8124  
  
James E. Soares Testamentary Trust  
7093 Dry Creek Rd  
Belgrade, MT 59714-8124

Priority Date: DECEMBER 31, 1900  
Enforceable Priority Date: DECEMBER 31, 1900

Type of Historical Right: USE

Purpose (use): STOCK

Maximum 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.

Maximum 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: SMITH CREEK  
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		N2N2NW	12	1N	4E	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:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NW	12	1N	4E	GALLATIN

Geocodes/Valid: 06-1010-01-3-02-07-0000 - Y

Remarks:

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

OWNERSHIP UPDATE RECEIVED  
OWNERSHIP UPDATE TYPE DOR # 78339 RECEIVED 11/06/2008.

Add to POU:  
ID ACRES GovtLot QTRSEC SEC TWP RGE COUNTY  
2 SWSW 1 1N 4E GALLATIN  
Geocode: 06-1010-01-3-30-01-0000  
  
3 E2SE 2 1N 4E GALLATIN  
Geocodes: 06-1010-02-4-01-01-0000 and 06-1010-02-4-01-83-0000