

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270 (In-state only)
(406) 586-4364
FAX: 522-4131

FILED

IN THE WATER COURT OF THE STATE OF MONTANA NOV 16 2004

UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)

Montana Water Court

IN THE MATTER OF THE ADJUDICATION OF)	CASE 41H-416
THE EXISTING RIGHTS TO THE USE OF ALL)	
THE WATER, BOTH SURFACE AND UNDERGROUND,)	41H-W-036672-00
WITHIN THE GALLATIN RIVER DRAINAGE AREA)	41H-W-110336-00
INCLUDING ALL TRIBUTARIES OF THE)	
GALLATIN RIVER IN GALLATIN, PARK AND)	
MADISON COUNTIES, MONTANA)	
_____)	

CLAIMANT: Thomas H. Clark and Carolyn S. Clark;
Steven M. Wallingford and Dawn L. Wallingford.

ON MOTION OF THE WATER COURT

ORDER ADOPTING AMENDED MASTER'S REPORT

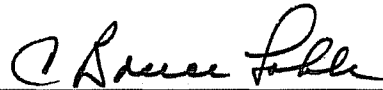
Pursuant to Montana Code Annotated, §85-2-233(5), the above entitled case was assigned to Water Master Colleen Coyle. The Water Master filed a report containing Findings of Fact and Conclusions of Law with the Clerk of Court. Copies of the report were served upon the parties on October 20, 2004. An error was discovered and the Water Master filed an Amended Master's Report containing Findings of Fact and Conclusions of Law with the Clerk of Court. Copies of the Amended Master's Report were served upon the parties on October 22, 2004. Over ten (10) days have elapsed since service, and no objections to the Findings and Conclusions have been filed by any party.

The Court has reviewed the Water Master's Findings and Conclusions.

Pursuant to Rule 53(e), Montana Rules of Civil Procedure, the Court **ADOPTS** the Amended Master's Report and

ORDERS that each **Abstract of Water Right Claim as Modified by the Montana Water Court** be served with this Order to confirm that the recommendations set forth in the Amended Master's Report have been adopted for each claim listed in the above caption.

DATED this *16* day of *NOVEMBER*, 2004.



C. Bruce Loble
Chief Water Judge

CERTIFICATE OF SERVICE

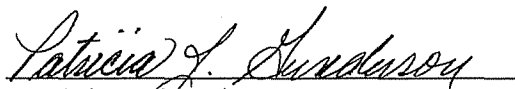
I, Patricia J. Gunderson, Deputy Clerk of Court of the Montana Water Court, hereby certify that a true and correct copy of the above **AMENDED MASTER'S REPORT** was duly served upon the persons listed below by depositing the same, postage prepaid, in the United States mail.

Thomas H. & Carolyn S. Clark
10894 Dixon Road
Rives Jct., MI 49277-9645

Steven M. & Dawn L. Wallingford
57 Prospector Trail
Bozeman, MT 59718

This Order Only
Rusty Taylor, DNRC
Water Resources Regional Office
2273 Boothill Court, Suite 110
Bozeman, MT 59715

DATED this *16* day of *November*, 2004.



Patricia J. Gunderson
Deputy Clerk of Court

**ABSTRACT OF WATER RIGHT CLAIM
AS MODIFIED BY THE WATER COURT**

**GALLATIN RIVER
BASIN 41H**

IMPORTANT NOTICE

AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.

Water Right Number: 41H 36672-00 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: CAROLYN S CLARK
1308 W WASHINGTON
JACKSON, MI 49203

THOMAS H CLARK
1308 W WASHINGTON
JACKSON, MI 49203

Priority Date: JUNE 30, 1868

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

***Flow Rate:** 0.41 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: 40.00

Source: EAST 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		SENWSE	4	1S	5E	GALLATIN

Diversion Means: PUMP

Period of Use: MAY 1 to OCTOBER 4

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	40.00		NWSE	4	1S	5E	GALLATIN
Total:	40.00						

**ABSTRACT OF WATER RIGHT CLAIM
AS MODIFIED BY THE WATER COURT**

**GALLATIN RIVER
BASIN 41H.**

IMPORTANT NOTICE

AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.

Water Right Number: 41H 110336-00 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: STEVEN M WALLINGFORD
57 PROSPECTOR TRAIL
BOZEMAN, MT 59718

DAWN L WALLINGFORD
57 PROSPECTOR TRAIL
BOZEMAN, MT 59718

Priority Date: JUNE 30, 1868

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 0.84 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: 520.93

Source: EAST 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		NWSWSE	10	1S	5E	GALLATIN

Diversion Means: HEADGATE

Period of Use: MAY 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	80.00		S2NW	3	1S	5E	GALLATIN
2	80.00		S2NE	3	1S	5E	GALLATIN
3	40.00		NWSE	3	1S	5E	GALLATIN
4	10.00		W2NESE	3	1S	5E	GALLATIN
5	38.37	1		3	1S	5E	GALLATIN

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>
6	38.40	2		3	1S	5E	GALLATIN
7	38.42	3		3	1S	5E	GALLATIN
8	38.57	4		3	1S	5E	GALLATIN
9	80.00		S2NE	4	1S	5E	GALLATIN
10	38.58	1		4	1S	5E	GALLATIN
11	38.59	2		4	1S	5E	GALLATIN
Total:	520.93						

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 OF THE CLAIMANT'S TOTAL 520.93 ACRES. 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.

110336-00 110337-00 110338-00 110339-00 110340-00 132779-00

IN THE WATER COURT OF THE STATE OF MONTANA

FILED

NOTICE OF FILING OF AMENDED MASTER'S REPORT OCT 22 2004

TO: ALL PARTIES

Montana Water Court

RE: CASE 41H-416; Claims 41H-W-036672-00, 41H-W-110336-00

This is to provide you with Notice that the Water Master has filed a Amended Master's Report (Findings of Fact and Conclusions of Law) with the Clerk of the Water Court for the water right(s) listed above. A copy of the Amended Master's Report is enclosed with this Notice.

Please review this Amended Master's Report carefully. If there are any corrections or changes that need to be made, you have 10 days from service of this Notice to file a written objection. You must mail a copy of your written objection to all the other parties who have been involved in this proceeding and file a certificate of such mailing with the Water Court. (This procedure is required by Rule 1.II. Water Right Claims Examination Rules and by Rules 5 and 53 of the Montana Rules of Civil Procedure.)

DATED this 22th day of October, 2004.

ANNA M. BURTON
Clerk of Court
Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270 (in Montana)

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 UPPER MISSOURI DIVISION
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IN THE MATTER OF THE ADJUDICATION OF)
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 GALLATIN RIVER IN GALLATIN, PARK AND)
 MADISON COUNTIES, MONTANA)

CASE 41H-416

41H-W-036672-00

41H-W-110336-00

FILED

OCT 22 2004

Montana Water Court

CLAIMANT: Thomas H. Clark and Carolyn S. Clark;
 Steven M. Wallingford and Dawn L. Wallingford.

ON MOTION OF THE WATER COURT

AMENDED MASTERS REPORT

FINDINGS OF FACT

1. Claims 41H-W-036672-00 and 41H-W-110336-00 are both based upon the 50.00 Miner's Inches (MI) of East Gallatin River water decreed to Pat Toohey with a June 30, 1868 priority date in *Toohey v. Campbell*, Cause No. 2889, Gallatin County.

Together these claims have exceeded this previously decreed right as follows:

CLAIM NO.	CLAIMANT	CLAIMED FLOW RATE
41H-W-036672-00	Carolyn S. Clark Thomas H. Clark	40.00 MI
41H-W-110336-00	Steven M. Wallingford Dawn L. Wallingford	17.00 MI

CLAIM NO.	CLAIMANT	CLAIMED FLOW RATE
TOTAL		57.00 MI
DISTRICT COURT DECREE		50.00 MI
TOTAL EXCEEDED		7.00 MI

As a result of this "decree exceeded" situation, a remark noting the potential issue appeared on each of these claims in the Temporary Preliminary Decree for this Basin. The claims were consolidated into Water Court Case 41H-416 for adjudication and a first status conference took place on January 21, 2004 in Bozeman, Montana.

2. On January 26, 2004, Rusty Taylor, DNRC Water Resource Specialist, filed a memorandum setting forth the issues in this case and possible options for resolution. Generally, his proposal provided that based on historic evidence, 33.5 miner's inches be distributed to the Wallingfords and 16.5 miner's inches be distributed to the Clarks.

3. On February 17, 2004, Steven M. Wallingford filed a letter indicating agreement with Mr. Taylor's proposal for resolution.

4. On March 26, 2004, Thomas H. Clark and Carolyn P. Clark filed a response indicating agreement with Mr. Taylor's proposal for resolution.

5. The parties' agreement resolves the decree exceeded situation, as follows:

CLAIM NO.	CLAIMANT	CLAIMED FLOW RATE	MODIFIED FLOW RATE
41H-W-036672-00	Carolyn S. Clark Thomas H. Clark	40.00 MI	16.5 MI (.41 CFS)
41H-W-110336-00	Steven M. Wallingford Dawn L. Wallingford	17.00 MI	33.5 MI (.84 CFS)
TOTAL		57.00 MI	50.00 MI
DISTRICT COURT DECREE		50.00 MI	50.00 MI

6. The decree exceeded issue remark should be removed from claims 41H-W-036672-00 and 41H-W-110336-00.

CONCLUSIONS OF LAW

I

The Montana Water Court has jurisdiction to review all objections to temporary preliminary decrees pursuant to § 85-2-233 MCA. This jurisdiction includes the ability to call claims in on Motion of the Water Court even if there are no filed objections to the claims. This authority is discretionary and is only exercised when the facts presented warrant proceedings despite the lack of objections. Water Court Case 41H-416 presents the type of facts that warrant calling these claims in on Motion of the Water Court. Both of the claims in this case are based on the same decreed right from the

East Gallatin River, and together, they have overclaimed this decreed right. In essence, these parties have filed claims that are adverse to one another. It is therefore appropriate to address the issues raised by these filings even though there have been no objections filed on the claims on these issues.

II

A properly filed Statement of Claim for existing water right is prima facie proof of its content, § 85-2-227 MCA. This prima facie validity may be overcome by other evidence that proves that one or more elements of the prima facie statement of claim are incorrect. This is the applicable standard of proof regardless of whether the objectors are adverse parties or the claimants objecting to their own water right claims. *See Memorandum Opinion, Order Adopting Master's Report, Water Court Case 40G-2 (March 11, 1997).*

III

The agreement of the parties constitutes a voluntary reduction in the elements that comprise water right claims 41H-W-036672-00 and 41H-W-110336-00. These reductions are within the parameters of the original statements of claim as filed for these water rights.

IV

The recommended changes to the claims in this case, as found in the Findings of Fact, address and resolve the potential decree exceeded issues noted by remarks that appeared on these claims in the Temporary Preliminary Decree.


The volume quantification on these direct flow irrigation claims shall be removed as authorized by Mont. Code Ann. §85-2-234(6)(b)(I).

RECOMMENDATIONS

1. The changes to claims 41H-W-036672-00 and 41H-W-110336-00, as stated in the Findings of Fact, should be adopted by the Water Court to correct the Temporary Preliminary Decree for this Basin.

2. The “decree exceeded” issue remarks should be removed from claims 41H-W-036672-00 and 41H-W-110336-00.

DATED this *22nd* day of *October*, 2004.



Colleen Coyle
Water Master

CERTIFICATE OF SERVICE

I, Patricia J. Gunderson, Deputy Clerk of Court of the Montana Water Court, hereby certify that a true and correct copy of the above **AMENDED MASTER'S REPORT** was duly served upon the persons listed below by depositing the same, postage prepaid, in the United States mail.

Thomas H. & Carolyn S. Clark
10894 Dixon Road
Rives Jct., MI 49277-9645

Steven M. & Dawn L. Wallingford
57 Prospector Trail
Bozeman, MT 59718

This Order Only
Rusty Taylor, DNRC
Water Resources Regional Office
2273 Boothill Court, Suite 110
Bozeman, MT 59715

DATED this *22* day of *October*, 2004.

Patricia J. Gunderson
Patricia J. Gunderson
Deputy Clerk of Court

IN THE WATER COURT OF THE STATE OF MONTANA

FILED

OCT 20 2004

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DATED this 20th day of October, 2004.

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Clerk of Court
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FILED
 OCT 20 2004

IN THE MATTER OF THE ADJUDICATION OF)
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 MADISON COUNTIES, MONTANA)
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CASE **Montana Water Court**

41H-W-036672-00
 41H-W-110336-00

CLAIMANT: Thomas H. Clark and Carolyn S. Clark;
 Steven M. Wallingford and Dawn L. Wallingford.

ON MOTION OF THE WATER COURT

MASTERS REPORT

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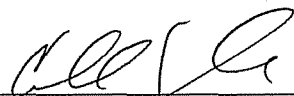
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Colleen Coyle
Water Master

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