



UPDATE TO FILE



STATEMENT OF CLAIM



***41J ***



207368



00

Current File Location: MONTANA WATER COURT

Box Bar Code _____

File Bar Code _____

Date/Initials _____

ADJ

FILED

DEC 09 2011

MONTANA WATER COURT
SMITH RIVER
(BASIN 41J)

Montana Water Court

NOTICE OF OBJECTION AND REQUEST FOR HEARING

1. Claim #: 41J 207368-00 2. County: Meagher
3. Page number in decree: 5186-5187 4. Source: White Sulphur Springs
5. Name of Owner(s) to whom the water right is issued: Gene M Gudmundson

6. Objectors Name, address and phone number: 7. Objector's Attorney Name, address and phone number:

State of Montana, Department of Fish,
Wildlife and Parks
1420 East Sixth Ave.
PO Box 200701
Helena, MT 59620-0701

Ph: (406) 444-3186
Fax: (406) 444-4952

G. Steven Brown
Power Block Building, Suite 4-O
7 West 6th Ave
Helena, MT 59601

Ph: (406) 442-8712
Fax: (406) 447-4255

8. Basis of Objection

- | | |
|---|---|
| ☒ All Elements | ☐ Priority Date |
| ☐ Flow Rate/Volume | ☐ Purpose of Right |
| ☐ Ownership | ☐ Source |
| ☐ Period of Diversion/Period of Use | ☐ Abandonment/Non-perfection |
| ☐ Place of Use/Maximum Acres | ☐ Other |
| ☐ Point of Diversion/Mean of Diversion | |

9. State the changes that you think should be made to this claim and why. State the specific grounds and evidence on which the Objection is based. (Use additional paper if necessary.)

DNRC Issue Remarks: At the time of the claimed priority date, it appears that the place of use was part of an Indian reservation. Volume may be excessive. Based on the flow rate and the period of use, the system would have to run 23.93 hours per day to deliver the claimed volume.

Other elements of this water right may need to be clarified based on actual historic use, if any.

DATED this 9th day of December, 2011.

G. STEVEN BROWN
G. Steven Brown
DFWP's Retained Counsel

626020
u

CERTIFICATE OF MAILING

I, G. Steven Brown, do solemnly swear that on the 9th day of December, 2011, I mailed a copy of this Objection, postage prepaid, addressed to the following:

Gene M Gudmundson
PO Box 724
White Sulphur Springs, MT 59645

G. STEVEN BROWN

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

**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
SMITH RIVER - BASIN 41J**

.....

Owner: GENE M GUDMUNDSON

Water Right #: 41J 207368-00

**NOTICE OF THE FILING OF AN OBJECTION
AND OPPORTUNITY TO FILE COUNTEROBJECTIONS**

This is to provide you with notice that the above water right issued in your name in the Smith River (Basin 41J) Preliminary Decree has been objected to by:

MONTANA, STATE OF DEPT OF FISH WILDLIFE & PARKS

This is also to notify you that you have until **MARCH 9, 2012** to file a counterobjection to claims of the objectors named in this Notice. You may not file a counterobjection to another claimant's water right claim unless your claim was first objected to by that claimant in this decree. Counterobjections are limited to claims included within this decree. There is no need for you to file a counterobjection to your own claim.

Counterobjection forms may be obtained from the Water Court, the Adjudication Office of the Department of Natural Resources & Conservation, 406-444-0560, or from www.dnrc.mt.gov/wrd/water_rts/adjudication/water_court on the Internet. Upon arrival at the website, scroll down to Basin 41J and click on Smith River.

Two informal public meetings will be held by Jay Porteen, the Water Master.

Tuesday evening, February 7, 2012 at 7:00 PM telephone conference call - dial 1-866-479-6576, at prompt enter code: 46309676#.

Thursday evening, February 23, 2012 at 7:00 PM telephone conference call - dial 1-866-479-6576, at prompt enter code: 46309676#.

Dated this 09th day of January, 2012.

/s/ C. Bruce Loble
Chief Water Judge
Montana Water Court

**COUNTEROBJECTIONS MUST BE RECEIVED AND FILED AT THE MONTANA
WATER COURT BY MARCH 9, 2012.**

WILLIAM A. SCHENK
 Agency Legal Counsel
 1420 East Sixth Avenue
 P.O. Box 200701
 Helena, MT 59620-0701
 (406) 444-3312
 bschenk@mt.gov
 Attorney for Department
 of Fish, Wildlife and Parks

FILED

FEB 17 2012

Montana Water Court

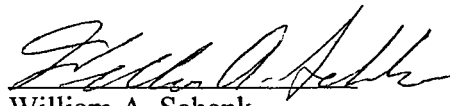
**IN THE WATER COURT OF THE STATE OF MONTANA
 UPPER MISSOURI DIVISION
 SMITH RIVER BASIN 41J**

OBJECTOR: Montana Department of Fish,
 Wildlife and Parks

)
) DEPARTMENT OF FISH, WILDLIFE
) AND PARKS' NOTICE OF
) WITHDRAWAL AND SUBSTITUTION
) OF COUNSEL
)

Pursuant to §37-61-403(1), MCA and Mont. Unif. Dist. Ct. R. 10(a), the Montana Department of Fish, Wildlife and Parks (DFWP) hereby gives notice that attorney of record G. Steven Brown is no longer representing DFWP in any case, objection or other matter before the Water Court in Basin 41J and withdraws as counsel for DFWP. Attorney William A. Schenk hereby enters his appearance as DFWP's counsel of record for all DFWP Objections in Basin 41J. Please remove Mr. Brown's name from the service list of all cases and direct all future communications to Attorney William A. Schenk.

DATED this 16 day of February, 2012.


 William A. Schenk

G. STEVEN BROWN
ATTORNEY AT LAW
POWER BLOCK BUILDING, SUITE 4-O
7 WEST 6TH AVENUE
HELENA, MONTANA 59601
TELEPHONE (406) 442-8712
FACSIMILE (406) 447-4255

December 9, 2011

Anna Burton
Clerk of Court
Montana Water Court
P.O. Box 1389
Bozeman, MT 59771-1389

Re: DFWP's Basin 41J Objections

Dear Anna:

Attached for filing are the Montana Department of Fish, Wildlife and Parks ("DFWP") objections to the following water right claims in Basin 41J, the Preliminary Decree for the Upper Missouri Division, Smith River:

<u>CLAIMANT</u>	<u>41J CLAIM NUMBER</u>
Kami L. Johnston, et al.	17720-00
Daniel Dinsdale, et al.	21376-00 21377-00
Barbara and Ray Russell	29449-00 29450-00
Holmstrom Land Co., et al.	37861-00
Jennie L. Palmer	43105-00
Holmstrom Land Co., et al.	100129-00
Evelyn A. Deering, et al.	109213-00
South Side Canal Users Association	119403-00
Tobacco Root Reserve LLC	143258-00

Ms. Anna Burton
December 9, 2011
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<u>CLAIMANT</u>	<u>41J CLAIM NUMBER</u>
Smith River Ranch LP	145774-00
	145775-00
	145776-00
Catlin Ranch LP	146088-00
	146089-00
	146090-00
	146091-00
	146092-00
	146093-00
	146094-00
	146095-00
	146096-00
	146097-00
	146098-00
	146099-00
	146100-00
	146101-00
	146102-00
	146103-00
	146104-00
	146105-00
Shirley Marxer	146750-00
	146751-00
Galt Ranch LP	181874-00
	181875-00
	181876-00
	181877-00
	181878-00
Robert F. Hardgrove	188956-00
Judith A. Kmon, et al.	196054-00
Galt Ranch LP	197858-00
Zehntner Brothers	198733-00

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CLAIMANT

41J CLAIM NUMBER

Smith River Ranch LP

198909-00

198910-00

198914-00

198915-00

James & Cacilie Park

200402-00

Galt Ranch LP

201922-00

201923-00

201925-00

201928-00

201931-00

John H. Snider

202260-00

E. L. Burns, et al.

205234-00

Daniel W. Rader, et al.

205388-00

Gene L. Willison

206226-00

Judith A. & William Kmon

206319-00

Zehntner Brothers

207127-00

Castle Mountain Ranch Inc.

207282-00

207283-00

207284-00

207285-00

207286-00

207287-00

207288-00

207289-00

207290-00

207291-00

207292-00

207293-00

207294-00

207295-00

207297-00

207301-00

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December 9, 2011
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CLAIMANT

Townsend Ranch Inc.

41J CLAIM NUMBER

207310-00

Gene M. Gudmundson

207368-00

w/ drawn

Meagher County Newlan Creek Water District

207441-00

207442-00

207443-00

207444-00

207445-00

207446-00

A. J. Burchak, Gipsy Creek Mining Co., et al.

207447-00

Montana DFWP

207449-00

207450-00

207451-00

207452-00

207453-00

207454-00

207455-00

207456-00

207457-00

207458-00

Montana Board of Land Commissioners

215236-00

215602-00

Judith Kmon, et al.

30042683

Thank you. Please contact me if you have any questions or concerns.

Sincerely,

STEVE BROWN

G. Steven Brown

c: Andy Brummond
Bill Schenk

WILLIAM A. SCHENK
Agency Legal Counsel
1420 East Sixth Avenue
P.O. Box 200701
Helena, MT 59620-0701
(406) 444-3312
bschenk@mt.gov
Attorney for Department
of Fish, Wildlife and Parks

FILED

FEB 23 2012

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA

IN THE MATTER OF THE ADJUDICATION)
OF THE EXISTING RIGHTS TO THE USE)
OF ALL THE WATER, BOTH SURFACE AND)
UNDERGROUND, WITHIN THE STATE OF)
MONTANA)
_____)

**MONTANA DEPARMENT OF FISH, WILDLIFE AND PARKS' NOTICE OF
SUBSTITUTION OF COUNSEL**

Comes Now the Montana Department of Fish, Wildlife and Parks (DFWP), pursuant to §37-61-403(1), MCA and with the consent of the attorneys and client, provide notice that attorney William A. Schenk, is substituted for attorney G. Steven Brown in all Water Court proceedings. This Notice represents a complete substitution of attorney regarding any claim before the Montana Water Court on which attorney G. Steven Brown formerly appeared as attorney for DFWP. From the date this Substitution is filed in the Water Court, attorney William A. Schenk will represent the DFWP before the Montana Water Court.

DATED this 22nd day of February, 2012.

G. STEVEN BROWN

G. Steven Brown
Power Block Building, Suite 4-O
7 West 6th Avenue
Helena, Montana 59601
Phone: (406) 442-8712
Fax: (406) 447-4255
E-mail: stevebrown@mthelena.com

DATED this 22 day of February, 2012.

William A. Schenk

William A. Schenk
Agency Legal Counsel
P.O. Box 200701
Helena, MT 59620-0701
Phone: (406) 444-3312
E-mail: bschenk@mt.gov
Attorney for DFWP

*WILLIAM SCHENK
Agency Legal Counsel
1420 East Sixth Avenue
P.O. Box 200701
Helena, MT 59620-0701
(406) 444-3312
E-mail bschenk@mt.gov
Attorney for Department
of Fish, Wildlife and Parks*

FILED

FEB 17 2012

Montana Water Court

**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
SMITH RIVER BASIN 41J**

CLAIMANT: Gene M Gudmunson;	)	Claim
	)	41J 207368-00
OBJECTORS: Department of Fish, Wildlife & Parks;	)	
_____	)	

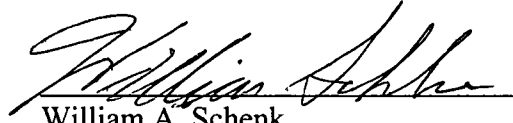
WITHDRAWAL OF OBJECTION

Objector Department of Fish, Wildlife & Parks (DFWP) hereby withdraws its Notice of Objection to Claim 41J 207368-00. DFWP based its objection to Claim 41J 207368-00 in part on an issue remark which indicated that the volume claimed was excessive. DFWP Water Conservationist Andy Brummond discussed the matter with Claimant Gene Gudmunson and determined the flow rate and volume of water claimed was reasonable and consistent with the historic use.

Mr. Brummond then communicated with DNRC about the examination of Claim 41J 207368-00 (which resulted in the volume issue remark). DNRC determined that the issue remark was inappropriately attached to Claim 41J 207368-00. A copy of the email from DNRC Water Resource Specialist Supervisor Arne Wick is attached.

Because the water use as decreed reflects the historic use of water and because the volume issue remark was incorrectly applied, DFWP withdraws its objection. It is no longer necessary to have a hearing before the Water Court regarding the above objection.

DATED this 16 day of February, 2012.

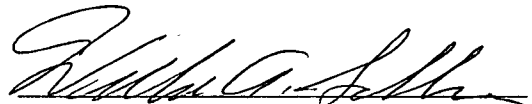

William A. Schenk
Attorney for Objector DFWP

CERTIFICATE OF SERVICE

I, William A. Schenk, attorney for the Montana Department of Fish, Wildlife and Parks, certify that I did, on the 16 day of February, 2012, serve a copy of the foregoing Withdrawal of Objection, by mail, postage prepaid, upon the following:

Gene M Gudmundson
PO Box 724
White Sulphur Springs, MT 59645

Arne Wick
DNRC Water Adjudication Bureau
PO Box 201601
Helena, MT 59620-1601


William A. Schenk

Brummond, Andy

From: Wick, Arne
Sent: Monday, December 19, 2011 10:51 AM
To: Brummond, Andy
Cc: spabear59645@yahoo.com
Subject: RE: 41J 207368-00 Spa Motel

Andy and Gene,

It appears DNRC examiner errored in applying this volume issue remark. If this were examine today, this issue would not be applied to this previously decreed right.

Arne Wick
Water Resource Specialist Supervisor
DNRC Adjudication Bureau
406.444.0481

From: Brummond, Andy
Sent: Friday, December 16, 2011 1:29 PM
To: Wick, Arne
Subject: RE: 41J 207368-00 Spa Motel

Thanks Arne.
Andy

From: Wick, Arne
Sent: Friday, December 16, 2011 9:23 AM
To: Brummond, Andy
Subject: RE: 41J 207368-00 Spa Motel

Andy,

We are looking into this, I'll get back to you after our review.

Arne

From: Brummond, Andy
Sent: Friday, December 16, 2011 9:06 AM
To: Wick, Arne
Subject: 41J 207368-00 Spa Motel

Arne

FWP objected to claim 41J 207368-00 which covers the geothermal well for the Spa Motel in White Sulphur. Gene Gudmundson, the owner, called me this week and we discussed his water use. I believe we will be able to settle our objection. Mr. Gudmundson also said that no one else objected. However, there is a volume issue remark on the claim which will need to be resolved. In the interest of efficiency I would like to make sure that FWP's settlement resolves the issue remark as well. In reviewing the claim file I am not sure I fully understand the basis for the issue remark. Could

you or one of your staff review the file and elaborate on the basis for the issue remark and what information or adjustments to the claim are needed to resolve the remark?

Thanks

Andy Brummond

Water Conservationist

Montana Fish, Wildlife & Parks

PO Box 938

Lewistown, MT 59457