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IN THE WATER COURT OF THE STATE OF MONTANA
 CLARK FORK DIVISION
 MAINSTEM BITTERROOT RIVER AND EAST SIDE SUBBASIN – BASIN 76HA

CLAIMANT: Daly Ditches Irrigation District	CASE 76HA-294
OBJECTOR: Daly Ditches Irrigation District; State of Montana Attorney General	76H 119912 00 76H 119934 00

CLAIMANT: Joan C. Heusted	CASE 76HA-384
OBJECTOR: Daly Ditches Irrigation District; State of Montana Attorney General	76H 7288 00 76H 9075 00 76H 150043 00

STIPULATION TO RESOLVE DNRC ISSUE REMARKS AND AGREEMENT TO PROPOSAL TO GENERATE IMPLIED CLAIMS

Daly Ditches Irrigation District ("DDID") and the State of Montana, hereinafter referred to collectively as "Parties", enter into the following Stipulation to Resolve the

DNRC Issue Remarks on claims 76H 119912 00 and 76H 119934 00 and agreement with the reconsolidation proposal submitted to the Water Court by Daly Ditches Irrigation District.

Background

Case 76HA-294

Case 76HA-294 includes only two claims: 76H 119912 00 and 76H 119934 00. Daly Ditches Irrigation District is the current owner of both claims that were originally filed by the State of Montana. Claim 76H 119912 00 was filed for irrigation purposes and 76H 119934 00 is a multiple use stock water claim. The claims were filed on Irrigation District forms and though filed as use rights, documentation included in the claim file indicated the rights were actually meant to reflect decreed rights in District Court Case No. 2149, *Ravalli Land and Irrigation Co. vs. R.W. Nichols, et.al.* dated July 29, 1916, also known as the Skalkaho Creek Decree. The rights claimed were based on an exchange whereby Skalkaho Creek water was exchanged for Bitterroot River water diverted and conveyed through the Hedge and Republican Ditches. The "Skalkaho Swap" or "Skalkaho Exchange" totals 79.13 cfs of the rights decreed in Case No. 2149.

Claims 76H 119912 00 and 76H 119934 00 were included in Water Court Basin 76HA Preliminary Decree with the following DNRC issue remarks:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON SKALKAHO CREEK WITH A PRIORITY DATE PREDATING CASE NO. 2149, RAVALLI COUNTY.

THIS CLAIM APPEARS TO BE CLAIMING TWO SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

The Water Court joined the State of Montana Attorney General as a party after attempts to resolve the DNRC issue remarks with the DNRC were unsuccessful.

DDID, the Attorney General's Office, and DNRC worked together to devise a plan to address the DNRC issue remarks and have DDID's claims reflect the full extent of the Skalkaho Swap. The plan consists of amending claims 76H 119912 00 and 76H 119934 00 to reflect all the decreed rights included in Case No. 2149 that have a June 1, 1865 priority date. Copies of these decreed rights were included in the claim files. The total flow rate for all the June 1, 1865 rights is 8.11 cfs. These two claims will have a remark that relates them to all the other individual claims filed for June 1, 1865 decreed rights in Case No. 2149. Each individual right will also receive a remark that ties them to claims 76H 119912 00 and 76H 119934 00. A remark would be added that use of water under claims 76H 119912 00 and 76H 119934 00 in conjunction with the private individual rights cannot exceed the historical amount decreed in Case 2149, Ravalli County, Montana. The remarks serve to ensure that any combined usage is limited to the historical decreed flow rate and therefore are not duplicative rights independently exercised.

The plan then calls for the Water Court to authorize implied claims be generated for each of the other separate priority dates that comprises all the "Skalkaho Swap" rights. The District Court in proceedings that established the Daly Ditches Irrigation District which is the successor of the Daly Ditches project and delivery system from the DNRC, defined a swap or exchange user at the time as: an individual who owns a decreed water right out of Skalkaho Creek and who claims the right to substitute or exchange water from the Bitterroot River water which is currently delivered to the

exchange user by the DNRC via the Daly Ditch Water Project in an amount equal to the decreed water of the exchange user diverted by the Daly Ditch Water Project.

Each implied claim would be related and tied to each private individual claim filed for the same priority date and similar remarks would be added to each claim.

Any decree exceeded situation that has been identified by the DNRC for the private rights filed against individual decreed rights will be resolved through individual case proceedings. Resolving the individual private claim filings decree exceeded situations will ensure the historic flow rates decreed in Case No. 2149, Ravalli County, Montana are not exceeded. This will resolve concerns raised by both the Water Court and DNRC as to ensuring that decree exceeding issues will be resolved.

Additionally, DDID will identify each private individual claim that has a place of use for lands included in Daly Ditches Irrigation District and include a remark that the right is part of the "Skalkaho Swap" and is delivered water under the swap or exchange. Private individual claims for lands that are not included in DDID will receive a remark indicating the right cannot be diverted through any of the Daly Ditches Irrigation District's delivery system, unless or until the owners join the District.

76HA-384

Case 76HA-384 was combined with proceedings in Case 76HA-294 as associated claims within the parameters of the agreed upon plan. Claims, 76H 7288 00, 76H 9075 00, and 76H 150043 00 are based on May 1, 1873 decreed rights in Case No. 2149. Claims 76H 7288 00 and 76H 150043 00 are filed for lands that are included in DDID and are part of the Skalkaho Swap. Claim 76H 9075 00 is filed for lands that are not included in DDID but claims a diversion that is under the sole ownership and

authority of DDID. The plan calls for remarks to be added to individual claims based on whether the place of use is included or not included within DDID. The remarks are meant to address points of diversion issues which were the basis for DDID's objections to these and nearly all Skalkaho Creek claims. The remarks clarify the use of water under the exchange and use of DDID's diversion system.

RECITALS

1. Claims 76H 119912 00 and 76H 119934 00 were timely filed and included in the Water Court Basin 76HA Preliminary Decree with the following DNRC issue remarks:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON SKALKAHO CREEK WITH A PRIORITY DATE PREDATING CASE NO. 2149, RAVALLI COUNTY.

THIS CLAIM APPEARS TO BE CLAIMING TWO SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

2. Daly Ditches Irrigation District timely filed objections to both claims.

3. The Water Court placed claims 76H 119912 00 and 76H 119934 00 in Water Court Case 76HA-294. The Water Court subsequently joined the State of Montana's Attorney General as a party on October 29, 2018.

4. Claims 76H 7288 00, 76H 9075 00, and 76H 150043 00 were timely filed.

5. DDID timely filed objections to claims, 76H 7288 00, 76H 9075 00, and 76H 150043 00 to address point of diversion issues related to the claims being decreed for diversions that are solely owned and operated by DDID.

6. The Water Court placed claims, 76H 7288 00, 76H 9075 00, and 76H 150043 00 in Water Court Case 76HA-384.

7. The Water Court combined Cases 76HA-294 and 76HA-384 to address various related issues and scenarios.

STIPULATION

THEREFORE, in mutual consideration for the terms and conditions set forth and described herein, the Parties stipulate and agree as follows:

1. The above recitals are incorporated herein as terms of this Agreement.
2. The Parties agree that the plan described above should be implemented by the Water Court.
3. Claim 76H 119912 00 should be adjusted to reflect the total flow rate of 8.11 cfs for all the rights decreed in Ravalli County Case No. 2149 with a June 1, 1865 priority date.
4. The type of right for both claims 76H 119912 00 and 76H 119934 00 should be adjusted to a Decreed Right.
5. The following remarks should be placed on the abstracts for claims 76H 119912 00 and 76H 119934 00:

THIS WATER RIGHT IS BASED ON A COMBINATION OF SEVERAL DECREED RIGHTS INCLUDED IN CASE NO. 2149, RAVALLI COUNTY, MONTANA, WITH PRIORITY DATES OF JUNE 1, 1865. SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

USE OF THIS WATER UNDER THIS RIGHT IS EXCHANGED WITH THE FOLLOWING RIGHTS. USE OF THIS RIGHT IN COMBINATION WITH ANY OR ALL OF THE FOLLOWING RIGHTS CANNOT EXCEED THE INDIVIDUAL DECREED FLOW RATES DECREED FOR THE JUNE 1, 1865 RIGHTS DECREED IN CASE 2149, RAVALLI COUNTY, MONTANA:¹

76H 2080 00	76H 7422 00	76H 26331 00	76H 107878 00	76H 148170 00
76H 3255 00	76H 7750 00	76H 26336 00	76H 108809 00	76H 148191 00
76H 4106 00	76H 9094 00	76H 26337 00	76H 109008 00	76H 148217 00
76H 4107 00	76H 15442 00	76H 31066 00	76H 109009 00	76H 148218 00
76H 4852 00	76H 15471 00	76H 36285 00	76H 109615 00	76H 148219 00
76H 4853 00	76H 15476 00	76H 36286 00	76H 115328 00	76H 148220 00
76H 4894 00	76H 15945 00	76H 47454 00	76H 116800 00	76H 148221 00
76H 4895 00	76H 15949 00	76H 100564 00	76H 118395 00	76H 148222 00
76H 4896 00	76H 15953 00	76H 101728 00	76H 118449 00	76H 148223 00
76H 4897 00	76H 15954 00	76H 103395 00	76H 119912 00	76H 148224 00

¹ The list of rights is based on the proposed reconsolidation. Alterations maybe made during subsequent proceedings with individual claimants. Any adjustments to the claim numbers is acknowledged as compliance with this Stipulation.

76H 4906 00	76H 15964 00	76H 104511 00	76H 119934 00	76H 149818 00
76H 4909 00	76H 15965 00	76H 104566 00	76H 131626 00	76H 151017 00
76H 4911 00	76H 19725 00	76H 104967 00	76H 147914 00	76H 169836 00
76H 4912 00	76H 20093 00	76H 105111 00	76H 147915 00	76H 211718 00
76H 5113 00	76H 21168 00	76H 105121 00	76H 147943 00	76H 211719 00
76H 5760 00	76H 21232 00	76H 105239 00	76H 147944 00	
76H 6622 00	76H 21233 00	76H 105356 00	76H 148023 00	
76H 7306 00	76H 24811 00	76H 105357 00	76H 148166 00	
76H 7309 00	76H 24812 00	76H 107547 00	76H 148167 00	
76H 7421 00	76H 25679 00	76H 107859 00	76H 148169 00	

6. The Parties agree that implied claims for each of the other priority dates included in the Skalkaho Creek decree that were identified in DDID's plan reconsolidation memo and information submitted to the Water Court, should be generated by the Water Court.

7. The plan calls for similar remarks to be placed on each DDID implied claim and the associated individual claims as outlined in the plan reconsolidation memo.

8. The plan methodology to limit any combined use of individual rights by the inclusion of the remarks, ensures compliance with the original Skalkaho Creek decree, while acknowledging the historic use of the water by DDID under the Skalkaho Swap or Exchange.

9. There is a unique relationship between DDID's use of water under the Skalkaho Swap or Exchange and the individual claim filings for those same decreed rights. The generation of the implied claims as outlined in the plan reconsolidation memo acknowledges this relationship and the continual use of all water under these claims and the associated historically decreed right in Case No. 2149.

10. Redline versions of the abstracts for claims 76H 119912 00 and 76H 119934 00 are attached hereto and incorporated into this Stipulation².

11. The following remarks should be included on claims 76H 7288 00 and 76H 150043 00:

² See footnote No. 1.

THE PLACE OF USE FOR THIS RIGHT IS INCLUDED IN THE DALY DITCHES IRRIGATION DISTRICT.

THIS WATER RIGHT IS PART OF THE SKALKAHO CREEK EXCHANGE ("SWAP") WHERE WATER HISTORICALLY DIVERTED FROM SKALKAHO CREEK IS EXCHANGED FOR WATER DIVERTED FROM THE BITTERROOT RIVER. THE POINT OF DIVERSION IS THE LOCATION OF THE EXCHANGE AND DOES NOT REFLECT AN ACTUAL DIVERSION OR DITCH FOR THIS WATER RIGHT. THIS WATER RIGHT IS EXCHANGED AND USED IN CONJUNCTION WITH DALY DITCHES IRRIGATION DISTRICT WATER RIGHT 76H [REDACTED] 00 AND CANNOT BE DIVERTED AND USED SEPARATE FROM WATER RIGHT 76H [REDACTED] 00. THE EXCHANGE WATER IS DIVERTED AND MANAGED BY DALY DITCHES IRRIGATION DISTRICT UNDER WATER RIGHT 76H [REDACTED] 00. WATER RIGHT 76H [REDACTED] 00 LISTS THE EXCHANGE DIVERSIONS WHICH ARE OWNED EXCLUSIVELY BY DALY DITCHES IRRIGATION DISTRICT AS PER DISTRICT COURT ORDER CAUSE NO. DV-82-95. THE DIVERSIONS INCLUDE THE FOLLOWING DITCHES: REPUBLICAN DITCH; HEDGE DITCH; SKALKAHO HILINE DITCH; HUGHES DITCH; WARD DITCH; REESER DITCH, THOMPSON DITCH.

12. The following remarks should be included on claim 76H 9075 00:

THE PLACE OF USE FOR THIS RIGHT IS NOT INCLUDED IN THE DALY DITCHES IRRIGATION DISTRICT.

THIS WATER RIGHT IS NOT CURRENTLY PART OF THE SKALKAHO CREEK EXCHANGE ("SWAP") WHERE WATER HISTORICALLY DIVERTED FROM SKALKAHO CREEK IS EXCHANGED FOR WATER DIVERTED FROM THE BITTERROOT RIVER. THE POINT OF DIVERSION LISTED ON THIS CLAIM IS THE LOCATION OF THE EXCHANGE AND DOES NOT REFLECT AN ACTUAL DIVERSION OR DITCH. THIS WATER RIGHT HAS NO RIGHT TO DIVERT WATER THROUGH ANY DIVERSION OR DITCH OWNED BY DALY DITCHES IRRIGATION DISTRICT AS PER DISTRICT COURT ORDER CASE NO. DV-82-95. IF THE OWNER(S) OF THIS WATER RIGHT BECOME MEMBER(S) OF THE DISTRICT THIS RIGHT WILL BE ASSOCIATED AND USED IN CONJUNCTION WITH WATER RIGHT 76H [REDACTED] 00. WATER RIGHT 76H [REDACTED] 00 LISTS THE EXCHANGE DIVERSIONS WHICH ARE OWNED EXCLUSIVELY BY DALY DITCHES IRRIGATION DISTRICT: REPUBLICAN DITCH; HEDGE DITCH; SKALKAHO HILINE DITCH; HUGHES DITCH; WARD DITCH; REESER DITCH; THOMPSON DITCH.

13. The Parties agree that the changes proposed and incorporated into this Stipulation address and resolves all DNRC issue remarks and the State of Montana Attorney General joinder in these proceedings. Furthermore, the plan and methodology described and incorporated herein resolves all issues regarding the generation of

implied claims and how to describe the Skalkaho Swap on both the implied claims and relation to individual claims as a matter of law. Any factual issue with individual claims will be resolved through individual case proceedings as matters of fact and does not at this juncture require enjoining the Attorney General unless necessary on an individual basis.

14. It is mutually understood and agreed that this Stipulation sets forth the entire agreement between the Parties pertaining to the matters addressed herein.

15. The parties execute this Stipulation fully understanding it, voluntarily, in good faith, and without any fraud, misunderstanding, misrepresentation, overreaching, duress, or undue influence, with the legal capacity to enter into it, and after having the opportunity to obtain any desired independent professional or other advice pertaining to the terms and conditions of this Stipulation.

16. This Stipulation shall be governed by and accordance with Montana law.

17. Each Party agrees to bear its own costs and attorney fees arising from the negotiation and execution of this Stipulation and the proceedings before the Montana Water Court.

18. The effective date of this Stipulation shall be the date of the last signature below.

19. Each Party represents it has the authority to execute this Stipulation and is bound by the terms and conditions herein.

20. This Stipulation may be executed by the Parties in several counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one instrument. Facsimile or electronically transmitted copies of signatures will be deemed the equivalent of original signatures. The effective date of this Stipulation shall be the date of the last signature below:

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Daly Ditches Irrigation District

By: 

04/7/2020
Date

State of Montana
Attorney General

By: _____
Jeremiah Langston

Date

20. This Stipulation may be executed by the Parties in several counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one instrument. Facsimile or electronically transmitted copies of signatures will be deemed the equivalent of original signatures. The effective date of this Stipulation shall be the date of the last signature below:

Daly Ditches Irrigation District

By: _____

Date

State of Montana
Attorney General

By: /s/ Jeremiah Langston
Jeremiah Langston

04/08/2020
Date