

# Memo

To: Water Right Claimant

You are receiving this packet of materials as a claimant of water rights currently being adjudicated by the Montana Water Court. This is the information packet and enclosed stipulation Daly Ditches Irrigation District (DDID) discussed in the initial Water Court telephone conference.

The Montana Water Court is tasked with adjudicating all water right claims in the state. The Court issued a decree in Basin 76HA on December 4, 2015. Basin 76HA includes all the water right claims for water diverted from the Bitterroot River and most of the eastside of the Bitterroot Valley.

The information below describes the background and Daly Ditches proposal. The enclosed stipulation is a written agreement to the proposal that will resolve Daly Ditches objection and, in most instances, resolve the case and your rights will be completely adjudicated by the Water Court.

## Background

In 1885 the Republican Ditch was constructed that conveyed water from the Bitterroot River to serve lands on the eastside of the Bitterroot Valley. In the late 1890s, Marcus Daly constructed the Hedge Ditch to divert water from the Bitterroot River to irrigate additional lands on the eastside. However, the pathways for these ditches crossed Skalkaho Creek and the lower Skalkaho Creek drainage. At the time, there were numerous private irrigation ditches from Skalkaho Creek that were in the pathways. Crossing all the private ditches would be a major obstacle. To resolve this situation, agreements were made that allowed the Hedge and Republican Ditches to sever those private Skalkaho Creek ditches and those irrigated lands below the Hedge and Republican Ditches would be delivered Bitterroot River water in exchange for their Skalkaho Creek water. The Skalkaho Creek water was then diverted and used in the upper basin. This exchange has been known as the "Skalkaho Swap" or "Skalkaho Exchange".

Marcus Daly also constructed several ditches in the upper reaches of Skalkaho Creek including the Ward Ditch and Skalkaho Hi-Line Ditch. In 1901, the Hedge and Republican Ditches and all the upper Skalkaho Creek ditches were conveyed to the Ravalli Land and Irrigation Company. The diversions and ditch system are referred to as "Daly Ditches".

In 1916, the District Court in Case No. 2149 issued a decree for all the existing rights to Skalkaho Creek. The decree established all the historic water rights but did not specify all the rights that were part of the Skalkaho Swap.

Later the Daly Ditches system was conveyed to the State of Montana. In 1979, the State Legislature directed the State to dispose of the Daly Ditches project by transferring or selling it, due to the extensive costs associated with operating the system. The Daly Ditches Irrigation District was formed to acquire the system from the State. The Irrigation District was created through proceedings in Ravalli County District Court in Case No. DV-82-95. During those proceedings, the Judge ruled Daly Ditches Irrigation District was the sole owner and operator of the Daly Ditches diversions and ditch system.

## **Water Rights**

During the time the State of Montana owned the Daly Ditches system, it filed two water right claims for all the water included in the “Skalkaho Swap”. The two claims are: 76H 119912 00 and 76H 119934 00. These claims were meant to reflect all the decreed water rights in Case No. 2149 from Skalkaho Creek that comprised the Skalkaho Swap. However, the claims were not filed correctly and subsequently included in the Water Court’s Basin 76HA decree inaccurately.

The Department of Natural Resources and Conservation (DNRC) is the agency that is responsible to examine all water right claims before the Water Court issues a decree. The DNRC was supposed to clarify not only Daly Ditches rights, but all the rights included and involved in the Skalkaho Swap. Unfortunately, this did not happen. The DNRC did not correct the Daly Ditches’ claims to reflect all the various decreed rights included in the Skalkaho Swap and it incorrectly listed one or more of the District’s ditches on private individual water right claims. This forced Daly Ditches to file objections with the Water Court to its own water rights and all the other rights DNRC incorrectly examined. This was the only way to ensure all the Skalkaho Creek rights are accurately adjudicated by the Water Court.

## **Water Court**

The Water Court initially placed Daly Ditches two claims, 76H 119912 00 and 76H 119934 00, in Water Court Case 76HA-294.

Due to the complex legal issues the Water Court joined the Attorney General's Office as a party in Case 76HA-294. Daly Ditches and the Attorney General, with assistance from the DNRC, devised a methodology to address Daly Ditches rights and all of the rights for Skalkaho Swap water.

The methodology is to generate claims for all the decreed rights from Case No. 2149 involved in the Skalkaho Swap. Each claim will represent a different priority date included in the Skalkaho Creek decree, Case No. 2149. Each DDID claim will then be related to all the individual Skalkaho Creek claims for that same priority date.

The Attorney General and Daly Ditches entered into an agreement that explained and adopted the methodology. The agreement has been filed with the Water Court in Case 76HA-294. If you would like to review that agreement a copy can be found on Daly Ditches Irrigation District’s website or Turek Water Right Research LLC’s website:

<https://dalyditches.com/>

<http://www.turekwater.com/ditches.html>

If you would like a hard copy, please contact Daly Ditches consultant Tracey Turek. Her contact information is listed below.

## **Proposal**

Daly Ditches objected to your water right(s) solely to address and clarify the Skalkaho Swap. To do this, your water right abstract will need to accurately describe the Swap and that Daly Ditches is the sole owner of the diversions and ditch systems.

There are currently two distinct categories of Skalkaho Swap water right claims that need to be addressed:

- claims that have a place of use included in the Daly Ditches Irrigation District and are members of the District
- claims that have a place of use **not** included in Daly Ditches Irrigation District and therefore are **not** members of the District.

If you are a member of Daly Ditches Irrigation District your water is delivered by the District under the swap and nothing in these proceedings will change or alter that delivery under the bylaws and operation of the District. Daly Ditches Irrigation District believes that any claim included in the District is truly an exchange water right and the right should be classified as such.

If you are **not** a member of Daly Ditches Irrigation District, then you have no right to use the Daly Ditches Irrigation District irrigation system to deliver your private water right. Daly Ditches Irrigation District is **not** taking away or challenging the validity of your water right. Daly Ditches Irrigation District is only clarifying that the diversions and ditches are owned by the District and cannot be listed on your water right abstract.

The enclosed stipulation describes Daly Ditches proposal that will clarify and accurately describe your rights as they pertain to the Skalkaho Swap. If you agree to the proposal the District's objection will be resolved and withdrawn.

If your Water Court case has multiple claims owned by different parties, your stipulation will only include redline versions of your claims and not every claim included in the case. Once signatures are returned, Daly Ditches will compile the signatures and attach all the redline abstracts for filing with the Water Court.

If you agree, please sign the stipulation were indicated and return the original to:

David T. Markette  
Markette & Chouinard P.C.  
601 South First Street  
PO Box 515  
Hamilton MT 59840

If you have any questions, please contact the Daly Ditches Irrigation District's consultant:

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