



**DRAKE &  
ASSOCIATES**

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November 10, 2005

Mindy Nowakowski  
Big Sky Owners Association  
PO Box 160057  
Big Sky, MT 59716

RECEIVED  
NOV 14 2005  
BY: *Kotz*

Dear Mindy:

Enclosed are two maps, one from DNRC's microfiche and another from one of their irrigation ditch location booklets, and my invoice.

Unfortunately, I discovered that the Big Sky Home Owners have no water rights listed for the ponds. I did find, however, that the Water & Sewer District does have irrigation rights totaling 9.1 cfs (41H-148445-00). This right has a point of diversion, indicated as a pump, located in the lower pond. While the abstract does not denote that the pump is located in a pond, it is clearly evident from the map.

I recommend that the Association meet with Ron Edwards to discuss the availability of using the Water District's pumping location to justify the pond. If Ron is cooperative and agrees, I would hire an attorney to file an amended claim indicating that the pump is in a pond, which is an intricate part of the pumping process. In the same amendment, I also recommend filing a change to indicate a fisheries component to that pond, and a change of use for a year round diversion. If DNRC does not agree to a year round diversion change the pond could still sustain a viable fishery with the addition of an aeration system.

I would also like to emphasize that an argument could be made that since the Water District's use is listed as municipal, the District could choose to maintain the ponds as an amenity for the Home Owners. The Association's lawyer might wish to investigate this possibility, if Ron Edwards is in agreement.

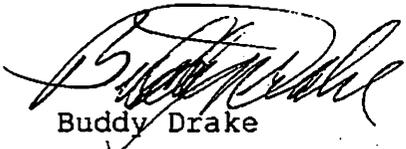
Justifying the upper pond is a bit trickier. The second map that I have included shows that historically, water was diverted out of both the North Fork and the Middle Fork of the West Gallatin to irrigate the land now covered by the Water District's pump in the lower pond. I surmise that by choosing to pump, the District changed the point of diversion and gave up the ditches located on those forks of the West Gallatin River. With this in mind, the Association might try to justify the upper pond by filing a change in the point of diversion for some of the District's irrigation water to a second pump, located in the upper pond. This might be more difficult to get through DNRC, but it is an option to consider.

Another, simpler option would be to drill a well with which to fill the pond. Having both ponds separated from the stream's channel, will require the Association to mitigate evaporative loss. A new well could mitigate loss in both ponds.

Mindy, thank you very much for the opportunity to comment on the Association's water rights and ponds. If you have questions about this letter, or my findings, please contact me. Otherwise, I would be more than happy to bid on re-digging and separating the ponds from the stream channel once the water rights have been cleared up.

Thank you very much.

Sincerely,



Buddy Drake

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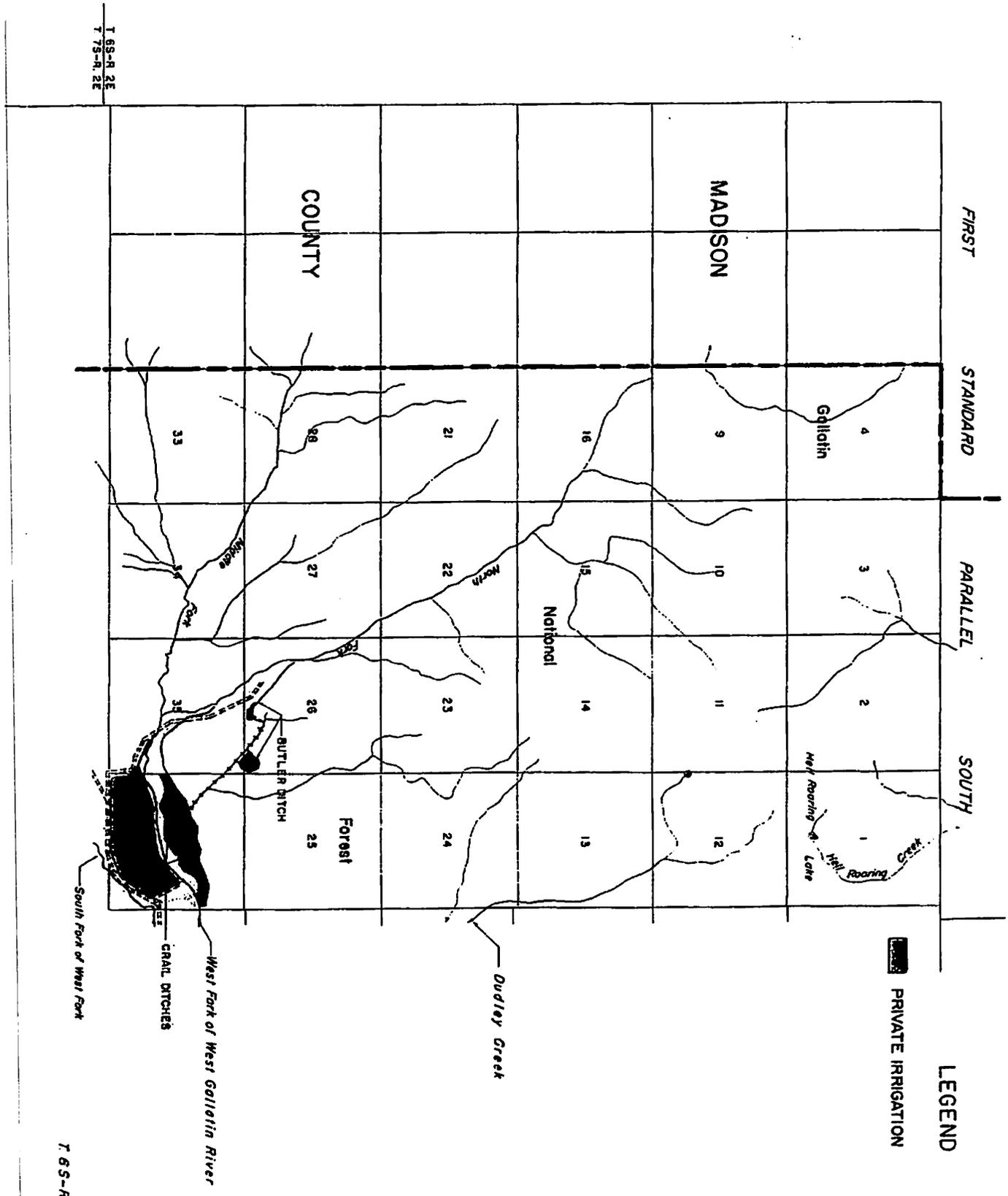


STEEPOSS HILLS SEC. 34  
AS SHOWN ON MAP

South Fork

Shaded as  
place of

LOT DEVELOPMENT  
NO. 0  
1957



T. 68-R. 2E  
 7-75-R. 2E

T. 65-R. 3E