

Montana Water Court  
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41F-6029-A-2022

November 16, 2022

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
MADISON RIVER BASIN (41F)

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CLAIMANTS: Jack Creek Ranch LLC; Madison Ventures LLC

**41F-6029-A-2022**  
41F 7599-00  
41F 7606-00

**NOTICE OF FILING OF MASTER’S REPORT**

This Master’s Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master’s Report within **10 days** of the stamped date if you disagree or find errors with the Master’s findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master’s Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master’s Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master’s Report.

## MASTER'S REPORT

### Statement of the case

Jack Creek Ranch LLC and Madison Ventures LLC filed a motion to amend the period of use for multiple use claims 41F 7599-00 (stock) and 41F 7606-00 (domestic).

### Issue

The period of use identified by temporary preliminary decree abstracts 41F 7599-00 and 41F 7606-00 was July 1 to June 30. Jack Creek Ranch LLC and Madison Ventures LLC contend the historically accurate period of use is January 1 to December 31.

Should Jack Creek Ranch LLC's and Madison Ventures LLC's motion to amend stock claim 41F 7599-00 and domestic claim 41F 7606-00 be granted?

### Findings of fact

1. Statements of claim 41F 7599-00 and 41F 7606-00 identified a year-round period of use from July 1 to June 30.
2. The motion to amend also identifies a year-round period of use from January 1 to December 31.
3. The period of use identified by claims 41F 7599-00 and 41F 7606-00 should be year-round, January 1 to December 31.

### Principles of law

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. Prima facie proof may be overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a "modest standard" and is evidence that demonstrates the fact to be proved is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. The Montana Water Court has jurisdiction to review a motion to amend pursuant to Section 85-2-233(6), MCA.

4. If an element of a claim did not appear on the objection list for a basin, and a motion to amend that element is filed with the Court, notice by publication of the amendment is required if there is the possibility of adverse affect to other water users. Section 85-2-233(6), MCA.

5. Rule 15 M.R.Civ.P. restricts the scope of an amendment to the conduct, transaction, or occurrence set forth in the original pleading - the “same set of operative facts as contained in the original pleading.” *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-423, 708 P.2d 1014, 1017 (1985). The requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15, 504 P.2d 277, 281 (1972).

6. The party seeking to amend a water right claim has the burden to show, by a preponderance of the evidence, that the claim elements they challenge do not accurately reflect the beneficial use of the water rights as they existed prior to July 1, 1973. *Nelson v. Brooks*, 2014 MT 120, ¶34, 375 Mont. 86, 329 P.3d 558; Rule 19, W.R.Adj.R.

## **Analysis**

Jack Creek Ranch LLC’s and Madison Ventures LLC’s motion to amend does not modify the year-round period of use. The motion to amend standardizes the dates identified by the year-round period of use to January 1 to December 31.

The changes requested in the motion to amend arise out of the same conduct, transaction, or occurrence specified on the original statements of claim, are based on the same operative facts specified in the statements of claim and are what was already claimed on the original statements of claim. The statements of claim and the motion to

amend are sufficient to support the historical accuracy of the amended period of use identified by claims 41F 7599-00 and 41F 7606-00.

The amendment does not have the possibility to adversely affect other water users. No public notice of the amendment is required.

**Conclusion of law**

Jack Creek Ranch LLC’s and Madison Ventures LLC’s motion to amend should be granted.

**Recommendations**

Claims 41F 7599-00 and 41F 7606-00 should be amended as follows to accurately reflect historical use.

**PERIOD OF USE:**                      ~~JULY 1 TO JUNE 30~~                      **JANUARY 1 TO DECEMBER 31**

**Remark:**

**THE PERIOD OF USE WAS AMENDED BY THE WATER COURT PURSUANT TO SECTION 85-2-233(6), MCA.**

Post Decree Abstracts of Water Right Claim accompany this report to confirm implementation of the recommendations in the state’s centralized water right record system.

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Anna M. Stradley  
Senior Water Master

**Service via USPS Mail**

Jack Creek Ranch LLC  
PO Box 762  
Ennis, MT 59729-0762

Madison Ventures LLC  
PO Box 506  
Locust Valley, NY 11560-1723

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
MADISON RIVER  
BASIN 41F**

**Water Right Number:** 41F 7599-00 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** MADISON VENTURES LLC  
PO BOX 506  
LOCUST VALLEY, NY 11560 1723

JACK CREEK RANCH LLC  
PO BOX 762  
ENNIS, MT 59729 0762

**Priority Date:** JUNE 13, 1884

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** 15.00 GPM

**\*Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** GROUNDWATER

**Source Type:** GROUNDWATER

**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		NESWNE	26	5S	1W	MADISON

**\*Period of Diversion:** JULY 1 TO JUNE 30

**Diversion Means:** WELL

**\*Period of Use:** JANUARY 1 TO DECEMBER 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				26	5S	1W	MADISON

**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

7599-00                      7606-00

THE PERIOD OF USE WAS AMENDED BY THE WATER COURT PURSUANT TO SECTION 85-2-233(6), MCA.

SEE GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR FURTHER DELINEATION OF THIS RIGHT.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
MADISON RIVER  
BASIN 41F**

**Water Right Number:** 41F 7606-00 STATEMENT OF CLAIM  
**Version:** 2 -- POST DECREE  
**Status:** ACTIVE

**Owners:** MADISON VENTURES LLC  
PO BOX 506  
LOCUST VALLEY, NY 11560 1723  
  
JACK CREEK RANCH LLC  
PO BOX 762  
ENNIS, MT 59729 0762

**Priority Date:** JUNE 13, 1884

**Type of Historical Right:** USE

**Purpose (use):** DOMESTIC

**Flow Rate:** 15.00 GPM

**Volume:** 3.00 AC-FT

**Households:** 1

**Maximum Acres:** 1.00

**Source Name:** GROUNDWATER

**Source Type:** GROUNDWATER

**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		NESWNE	26	5S	1W	MADISON

**Period of Diversion:** JULY 1 TO JUNE 30

**Diversion Means:** WELL

**\*Period of Use:** JANUARY 1 TO DECEMBER 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	1.00		NESWNE	26	5S	1W	MADISON
<b>Total:</b>	<b>1.00</b>						

**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

7599-00                      7606-00

THE PERIOD OF USE WAS AMENDED BY THE WATER COURT PURSUANT TO SECTION 85-2-233(6), MCA.

SEE GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR FURTHER DELINEATION OF THIS RIGHT.