

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MADISON RIVER BASIN (41F)
PRELIMINARY DECREE

CLAIMANT: Alton Living Trust

OBJECTOR: Alton Living Trust

CASE 41F-0010-R-2024

41F 18685-00

41F 18686-00

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

Claimant, Alton Living Trust, objected to its own captioned stock claims, stating the source identified by each claim should be “Spring, Unnamed Tributary of Madison River.”

On November 25, 2024, Alton Living Trust filed its Response to Order Setting Settlement Deadline and Request to Modify Source Name in Preliminary Decree.

Issue

Is Alton Living Trust’s objection to each claim resolved?

Finding of fact

A preponderance of evidence establishes the source name for claims 41F 18685-00 and 41F 18686-00 should be “Spring, Unnamed Tributary of Madison River.”

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. Settlement, including the documents filed by a claimant where the claimant is the only party, is subject to review and approval by the Water Court. Rule 17(a),

W.R.Adj.R.

4. If the settlement agreement expands or enlarges an element of a claim, evidence meeting the burden of proof must be provided. If the evidence does not meet the burden of proof, the element shall not be expanded or enlarged. Rule 17(b), W.R.Adj.R.

Analysis

Issue – source name

Stock statements of claim 41F 18685-00 and 41F 18686-00 identified their source as “spring.” During verification of the claims, in preparation for the 1984 Basin 41F Temporary Preliminary Decree, the Department of Natural Resources and Conservation (“DNRC”) clarified the source name for these claims to “Spring, Unnamed Tributary of Blaine Spring Creek.”

Alton Living Trust states DNRC incorrectly clarified the source name pointing to confusion caused by inconsistent naming of the source in reference materials.

- The Madison County Water Resources Survey maps and a contemporary Google Earth screen shot map depict the involved tributaries as a western channel of the Madison River below the confluence with Blaine Spring Creek while a narrative description provided by the history section of the WRS refers to a “channel of the Madison River known as Spring Creek....”
- The USGS topographic maps show “the side channel of the Madison River below its confluence with the smaller tributary Blaine Spring Creek, as Blaine Spring Creek.” However, the WRS maps “clearly show that Blaine Spring Creek is a smaller tributary stream of the larger western channel of the Madison River....”
- The DNRC Water Right Query System base maps inconsistently name the channel as either Blaine Spring Creek or the Madison River.

Alton Living Trust also identifies other claims in this area where DNRC standardized the source name to the Madison River in preparation for the 2023

Preliminary Decree.

Alton Living Trust summarizes that the springs are “tributary to a western channel of the Madison River; they are not tributary to Blaine Spring Creek.”

Alton Living Trust’s response and evidence in support of its requested modification to source name may be viewed on the court’s case management system, FullCourt Enterprise, at document sequence 2.00.

Conclusions of law

The evidence entered into the record for source overcomes the source identified by prima facie statements of claim 41F 18685-00 and 41F 18686-00, justifies the modification to each claim, and resolves Alton Living Trust’s objection to each claim.

Recommendations

Stock claims 41F 18685-00 and 41F 18686-00 should be modified as follows to accurately reflect historical use.

SOURCE:

~~SPRING, UNNAMED TRIBUTARY OF BLAINE SPRING CREEK~~

SPRING, UNNAMED TRIBUTARY OF MADISON RIVER

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.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail

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

Water Right Number: 41F 18685-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ALTON LIVING TRUST
PO BOX 4029
WESTLAKE VILLAGE, CA 91359

Priority Date: NOVEMBER 25, 1879

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***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: SPRING, UNNAMED TRIBUTARY OF MADISON RIVER

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		NESESE	31	6S	1W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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			E2SE	31	6S	1W	MADISON

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

Water Right Number: 41F 18686-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ALTON LIVING TRUST
PO BOX 4029
WESTLAKE VILLAGE, CA 91359

Priority Date: NOVEMBER 25, 1879

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***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.

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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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			E2SE	31	6S	1W	MADISON