

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

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CLAIMANT: Alton Living Trust

OBJECTOR: Alton Living Trust

**CASE 41F-0012-R-2024**  
41F 18692-00

**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**

The Water Court issued two decrees for Basin 41F - the Temporary Preliminary Decree in 1984 and the Preliminary Decree in 2023. To prepare the Preliminary Decree for issuance, the Water Court ordered the Department of Natural Resources and Conservation (“DNRC”) to standardize points of diversion, ditch names, and sources, and to add an issue remark to claims noting such modifications.

Alton Living Trust irrigation claim 41F 18692-00 appeared in the Preliminary Decree with the following issue remark:

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

The issue remark instructed claimant and other water users that if no objections were filed to the modification, the ditch name would remain as it appeared on the Preliminary Decree abstract.

Alton Living Trust filed an objection to the ditch name identified by the Preliminary Decree Abstract stating “DNRC improperly identified the ditch name for this right during re-examination.”

Montana law requires the Water Court to resolve objections and issue remarks.

### **Issues**

The Preliminary Decree abstract identifies the Shewmaker-Rankin Ditch. Alton Living Trust contends the ditch name should be the Shewmaker Ditch.

1. Is Alton Living Trust’s objection to claim 41F 18692-00 resolved?
2. Is the issue remark concerning ditch name on claim 41F 18692-00 resolved?

### **Finding of Fact**

The historically accurate ditch name for irrigation claim 41F 18692-00 is the Shewmaker Ditch.

## **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. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

4. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

5. Judicial notice of facts may be taken from a source “whose accuracy cannot be reasonably questioned.” Rule 201, M.R.Ev.

## **Analysis**

### **Issues 1 and 2 – ditch name and issue remark resolution**

Judicial notice is taken of the Madison County Water Resources Survey (1965) (“WRS”). WRS page 43 of Part II Maps Showing Irrigated Areas, depicts the Shewmaker-Rankin Ditch running south from Wigwam Creek, away from the place of use identified by claim 41F 18692-00. The WRS depicts the Shewmaker Ditch running north from Wigwam Creek to the place of use identified by claim 41F 18692-00.

The WRS information matches the map attached to prima facie statement of claim 41F 18692-00.

The Madison County Water Resources Survey and information in claim file 41F 18692-00 support Alton Living Trust's objection. DNRC erred when it standardized the ditch name.

The notice issue remark concerning ditch name provided the opportunity for claimant and other water users to object to the claim. Alton Living Trust filed the only objection to the ditch name identified by irrigation claim 41F 18692-00. Alton Living Trust's objection is resolved by these proceedings.

### **Conclusions of law**

The evidence before the court justifies the modification to the claim and resolves both Alton Living Trust's objection to and the issue remark appearing on claim 41F 18692-00.

### **Recommendations**

Irrigation claim 41F 18692-00 should be modified as follows to accurately reflect historical use.

**Ditch Name:**    ~~SHEWMAKER-RANKIN-DITCH~~                                 **SHEWMAKER DITCH**

The issue remark should be removed from the claim abstract.

A Post Decree Abstract of Water Right Claim accompanies 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 18692-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

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

**Priority Date:** APRIL 1, 1904

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 3.13 CFS

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 210.00

**Source Name:** WIGWAM CREEK

**Source Type:** SURFACE WATER

**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		SWNWSW	20	7S	1W	MADISON

**Period of Diversion:** APRIL 1 TO OCTOBER 31

**Diversion Means:** HEADGATE

**Ditch Name:** SHEWMAKER DITCH

**Period of Use:** APRIL 1 TO OCTOBER 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	210.00			6	7S	1W	MADISON

**Total:** 210.00

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

18690-00            18692-00