

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: Jamie L. Chu

OBJECTOR: Jamie L. Chu

**CASE 41F-0024-R-2024**  
41F 30146184

**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**

Jamie L. Chu stock claim 41F 30146184 appeared in the Preliminary Decree with the following issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41F DECREE ISSUED 07/25/1984.

Jamie L. Chu filed an objection to the source name identified by the Preliminary Decree Abstract.

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

### **Issues**

The Preliminary Decree abstract identifies the source name "Unnamed Tributary of Blaine Spring Creek." Jamie L. Chu contends the source name should be "Cold Spring Creek."

1. Is Jamie L. Chu's objection to claim 41F 30146184 resolved?
2. Is the notice issue remark noting claim 41F 30146184 was not in the previous Basin 41F decree resolved?

### **Finding of Fact**

The historically accurate source name for stock claim 41F 30146184 is Cold Spring Creek.

### **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.

## **Analysis**

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

Jamie L. Chu's objection to stock claim 41F 30146184 stated "The source of this claim is Cold Spring Creek, and DNRC inaccurately corrected the source name of this claim to UT of Blaine Springs Creek. The source should be corrected to the way it was claimed on the statement of claim and information in support."

Jamie L. Chu provided a map from the Madison County Water Resources Survey (1965) ("WRS"). (See the court's case management system, FullCourt Enterprise, at document sequence 5.00, Ex. B.) WRS page 44 of Part II Maps Showing Irrigated Areas, depicts Cold Spring Creek running through the place of use identified by livestock direct from source claim 41F 30146184. The WRS information matches the hand drawn maps attached to prima facie statement of claim 41F 30146184.

The Madison County Water Resources Survey and information in claim file 41F 30146184 support Jamie L. Chu's objection. DNRC erred when it standardized the source name.

The notice issue remark noting the claim was not in the previous Basin 41F decree provided the opportunity for claimant and other water users to object to the claim. Jamie L. Chu filed the only objection to stock claim 41F 30146184. Jamie L. Chu's objection is resolved by these proceedings.

## **Conclusions of law**

The evidence before the court justifies the modification to the claim and resolves both Jamie L. Chu's objection to and the issue remark appearing on claim 41F 30146184.

## **Recommendations**

Stock claim 41F 30146184 should be modified as follows to accurately reflect historical use.

**SOURCE NAME:**     ~~UNNAMED TRIBUTARY OF BLAINE SPRING CREEK~~     **COLD SPRING CREEK**

The notice 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 30146184 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** JAMIE L CHU  
PO BOX 1326  
ENNIS, MT 59729

**Priority Date:** APRIL 1, 1884

**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:** COLD SPRING 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		SESENE	23	7S	2W	MADISON

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		NENESE	23	7S	2W	MADISON
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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			SESENE	23	7S	2W	MADISON
2			NENESE	23	7S	2W	MADISON