

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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CLAIMANTS: Jan Murphy; TK Ranch, LLC

OBJECTOR: Jan Murphy

NOTICE OF INTENT TO APPEAR: Thomas Solomon

**CASE 41F-0076-R-2025**  
41F 136413-00

**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

The Montana Water Court included claim 41F 136413-00 in the Preliminary Decree for the Madison River (Basin 41F) issued on July 26, 2023. The claim received an issue remark from the Montana Department of Natural Resources and Conservation during its pre-decree examination of the claim, a self-objection from Jan Murphy, and notice of intent to appear from Thomas Solomon. Claim examination confirms the historical use of water right claims and identifies issues with claims. If examination cannot confirm some aspect of a claim, an issue remark is added to the claim. It is therefore ORDERED the above-captioned claim be consolidated into Water Court Case 41F-0076-R-2025.

### FINDINGS OF FACT:

1. Claim 41F 136413-00 is a decreed right from North Meadow Creek for flood irrigation with a priority date of June 1, 1902.
2. The claim is co-owned by Jan Murphy and TK Ranch, LLC.
3. The claim received the following issue remark in the Basin 41F Preliminary Decree:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 18.00 GPM PER ACRE.

4. Jan Murphy filed an objection to the flow rate and all elements of the claim. The objection states the following:

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THE FLOW RATE IS ACCURATE AS CLAIMED AND AS IT APPEARS IN THE PRELIMINARY DECREE. DNRC'S ISSUE REMARK REGARDING FLOW RATE SHOULD BE REMOVED. OBJECTOR RESERVES THE RIGHT TO MODIFY THIS OBJECTION BASED UPON INFORMATION OBTAINED DURING THE COURSE OF ADJUDICATION.

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5. Thomas Solomon filed a notice of intent to appear that states the following:  
*More information needed during adjudication process regarding flow rate and All Elements*
6. The claim is based on a water right for 40 miner's inches (1.00 cfs) from North Meadow Creek with a priority date of June 1, 1902, decreed to Thomas A. Ferguson in the North Meadow Creek Decree (*A.S. Marshall, et al. v. Hugh Elliot*, Cause No. 1236 (Mont. Fifth Jud. Dist., Madison County, April 7, 1981)). Copies of the

pertinent portions of the Decree are attached to the statement of claim filed for claim 41F 136413-00.

7. The North Meadow Creek Decree supports the claimed flow rate of 1.00 cfs, even though it exceeds the DNRC's flow rate guideline for the claimed purpose.

8. The issue remark and Jan Murphy's objection<sup>1</sup> are resolved.

### CONCLUSIONS OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298.

2. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. 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.

4. When resolving issue remarks, the 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. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

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<sup>1</sup> Jan Murphy objected to the flow rate and all elements of the claim. However, Ms. Murphy only specifically addressed the flow rate element in the basis of her objection. It appears she filed an objection to "all elements" so she could "modify this objection based upon information obtained during the course of the adjudication." This does not raise an additional issue with the claim that requires resolution by the Water Court. Accordingly, the only issue raised by Jan Murphy's objection – and in this case – is the flow rate. If Jan Murphy disagrees with this finding, she should object to this Master's Report.

5. The issue remark placed on the claim does not overcome the prima facie status afforded the flow rate element. Though the claimed flow rate exceeds the DNRC's guideline for its purpose, guidelines are not always sufficient evidence to overcome the prima facie status of a claim. Here, the claimed flow rate is supported by a judicial decree. The flow rate should remain at 1.00 cfs. The issue remark should be removed and Jan Murphy's objection should be deemed resolved.

6. A notice of intent to appear may be filed by any person, other than the claimant or objector, who wishes to participate in the proceedings for a particular claim. Rule 9(b), W.R.Adj.R.

7. There must be proceedings in which a notice of intent to appear party can appear. The proceedings are based on an objection, a counterobjection, an issue remark, or a Rule 8, W.R.Adj.R., motion of the Montana Water Court. Absent such proceedings, the notice of intent to appear party has nothing in which it can appear. *In re Erb*, 2016 Mont. Water LEXIS 2, at 12, states:

In summary, the language of Rule 9(b) and Rule 10, W.R.Adj.R. prohibit an NOIA party from expanding the issues in a water rights case. Under these rules, such a party is limited to participating in resolution of issues raised by objections, counterobjections, issue remarks, or issues raised on motion of the Water Court.

9. Because the DNRC issue remark and Jan Murphy's objection are resolved by the judicial decree attached to the statement of claim, the notice of intent to appear party should be dismissed as there are no further proceedings for this claim in which Thomas Solomon can participate.<sup>2</sup>

### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court remove the issue remark placed on the claim, and dismiss objector Jan Murphy and notice of intent to appear party Thomas Solomon.

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<sup>2</sup> In the previous footnote, the Court found only the flow rate element is at issue in this case. All issues with the flow rate are resolved. Therefore, Thomas Solomon has no basis to further participate in this case and he should be dismissed. Should Thomas Solomon disagree that there are no further issues for which he can participate as a notice of intent to appear party, he should object to this Master's Report and provide evidence to support his objection.

A Post Decree Abstract of Water Right Claim is served with this Master's Report to confirm these recommendations have been made in the state's centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail**

TK Ranch, LLC  
PO Box 40  
McAllister, MT 59740

Thomas Solomon  
PO Box 40  
McAllister, MT 59740

**Service via Electronic Mail**

Breeann M. Johnson  
Western Roots Law PLLC  
P.O. Box 7004  
Bozeman, MT 59771  
(406) 600-9389 (Johnson)  
Johnson@westrootslaw.com

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

**Water Right Number:** 41F 136413-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** JAN MURPHY  
PO BOX 591  
ENNIS, MT 59729-0591  
  
TK RANCH LLC  
PO BOX 40  
MCALLISTER, MT 59740

**Priority Date:** JUNE 1, 1902

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.00 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:** 25.00

**Source Name:** NORTH MEADOW 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		NWNENW	3	4S	2W	MADISON

**Period of Diversion:** MAY 5 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** HAGL DITCH

**Period of Use:** MAY 5 TO OCTOBER 1

**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	13.00		NENE	3	4S	2W	MADISON
2	12.00		NWNW	2	4S	2W	MADISON
<b>Total:</b>	25.00						

**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.

136413-00

148618-00