

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

\*\*\*\*\*

CLAIMANT: T-L Irrigation Co.

OBJECTOR: T-L Irrigation Co.

**CASE 41F-0027-R-2024**

41F 132631-00

41F 132633-00

41F 132634-00

**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, T-L Irrigation Co. filed a late objection to each of the above captioned claims and a timely filed objection to claim 41F 132633-00 for the recently issued Basin 41F Preliminary Decree. T-L Irrigation Co.'s objections stated the maximum acres irrigated and place of use identified by each claim should be increased.

The captioned claims received notice issue remarks concerning modification of each claim's elements by the DNRC pursuant to court order and issue remarks noting T-L Irrigation Co.'s late objections. The court ordered the addition of the late objection issue remark to each claim. Montana law requires the Water Court to resolve issue remarks and objections.

On May 13, 2025, T-L Irrigation Co. filed evidence to resolve its objections.

### **Issues**

1. Is T-L Irrigation Co.'s objection to each claim resolved?
2. Are the issue remarks on each claim resolved?

### **Finding of fact**

A preponderance of evidence establishes the captioned irrigation claims serve the same 167.00-acre place of use.

### **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.

5. 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.

6. 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.

7. Judicial notice of law may be taken. Rule 202, M.R.Ev.

8. Marshaling is the consolidation or commingling of water rights, typically resulting in a changed pattern of historical water use. Marshaled water rights may be:

- used through different points of diversion than historically claimed, and/or
- used on a different or expanded place of use than historically claimed.

Such a change is allowed if it does not cause injury to other water users. The burden is on the party claiming an injury to prove the change to the water rights at issue adversely impacts their ability to exercise their water rights. Section 89-803, RCM (1947) (repealed 1973); *Quigley v. McIntosh*, 110 Mont. 495, 103 P.2d 1067 (1940); *Thrasher v. Mannix & Wilson*, 95 Mont. 273, 26 P.2d 370 (1933); *Tucker v. Missoula Light & Railway Co.*, 77 Mont. 91, 99, 250 P. 11, 11 (1926); *Head v. Hale*, 38 Mont. 302, 100 P. 222 (1909); *Wales Brothers*, 2010 Mont. Water LEXIS 2 at \*\* 8-11, (Oct. 15, 2010).

9. Facts that support marshaling as a historical practice, are:

- the water rights and places of use were owned by a single owner at the time statements of claim were filed, resulting in the rights being supplemental to one another, and
- the lack of an increase in the overall flow rate and volume, or burden on a source, signaling that no incremental development has occurred by marshaling the rights.

## **Analysis**

### **Issue 1 – objection resolution**

The captioned irrigation statements of claim were filed by Bar Seven Ranch. In 1986, T-L Irrigation Co. became the owner of these claims. On October 6, 1987, T-L Irrigation Co. filed late objections to the volume, maximum acres irrigated, and place of use for each claim. The late objection to volume was resolved during Temporary Preliminary Decree proceedings. (See July 1, 1991 Master’s Report and July 31, 1991 Order Adopting Master’s Report.)

The late objection to each claim and its attachments<sup>1</sup>, support the historical accuracy of the proposed increase in the maximum acres irrigated and place of use for the captioned irrigation claims. The court takes judicial notice of the DNRC Water Rights Claim Examination Manual. DNRC utilizes contact points to guide whether the number of acres irrigated claimed by the statement of claim versus the number of acres irrigated confirmed by DNRC during claims examination are within a margin of error that warrants further review.<sup>2</sup> If the examined acres fall within the contact points for the claimed acres, the DNRC accepts the acreage figure and does not contact the claimant, nor does the claim receive an issue remark.

Statement of claim 41F 132631-00 claimed a 68.80-acre place of use – however DNRC verified a 73.00-acre place of use. The high contact point for 73.00 acres is 83.50 acres. The requested modification to an 89.00-acre place of use for this field falls just outside the high contact point. This *de minimis* amount of irrigation outside the contact point does not raise concern regarding the historical accuracy of the requested modification. Statement of claim 41F 132633-00 claimed a 30.80-acre place of use. The

---

<sup>1</sup> The attachments are a map and table of acres irrigated prepared by the ASCS based upon a 1964 ASCS aerial photo (See the explanation provided by the “Abstract” attached to each statement of claim concerning the map) and a 1979 USDA aerial photo used for claims examination (See Nov. 4, 1982 claims examination worksheet in claim file 41F 132361-00.)

<sup>2</sup> May 2013 DNRC Water Rights Claim Examination Manual, Ch. VII.D.2.e.

high contact point for 30.80 acres is 37.00 acres. The requested modification to a 37.00-acre place of use for this field matches the high contact point. There is no concern regarding the historical accuracy of the requested modification. Statement of claim 41F 132634-00 claimed a 37.00-acre place of use. The high contact point for 37.00 acres is 44.00 acres. The requested modification to a 41.00-acre place of use for this field falls within the high contact point. There is no concern regarding the historical accuracy of the requested modification.

T-L Irrigation Co. asserted in its October 6, 1987 late objection for each claim that the 3 irrigation claims in this case historically irrigated the same place of use – the proposed 167.00-acre total for the three fields discussed above. As noted earlier, T-L Irrigation Co.’s predecessor in interest filed each of the statements of claim in these proceedings, the claims all claimed and used the same point of diversion and the Kennedy Ditch, and the addition of acreage to the marshaled place of use is not an incremental development of the claims as no additional amount of water was developed. T-L Irrigation Co.’s evidence supports the marshaling of these claims as a historical practice.

T-L Irrigation Co.’s Filing of Evidence may be viewed on the court’s case management system, FullCourt Enterprise, at document sequence 5.00.

### **Conclusions of law**

The evidence entered into the record for the maximum acres irrigated and place of use overcomes the maximum acres irrigated and place of use identified by the captioned prima facie statements of claim, justifies the modifications to each claim, and resolves T-L Irrigation Co.’s objections to each captioned claim.

### **Issue 2 – issue remark resolution**

The captioned claims appeared in the Preliminary Decree with the following issue remarks:

A LATE OBJECTION HAS BEEN FILED TO THE PLACE OF USE, ACRES IRRIGATED AND VOLUME OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

POINT OF DIVERSION AND DITCH NAME WERE 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.

Each of the foregoing issue remarks provided the opportunity for claimant and other water users to object to the claims, or elements of the claims noted by the issue remarks. As noted previously, T-L Irrigation Co.'s late objection to volume was resolved during Temporary Preliminary Decree proceedings for each claim. T-L Irrigation Co.'s late objection to the acres irrigated and place of use for each claim is resolved by these proceedings. No water users objected to the point of diversion or ditch name identified by these claims.

### **Conclusions of law**

The late objection issue remark on each claim is resolved.

The notice issue remark concerning point of diversion and ditch name on each claim served its purpose.

### **Recommendations**

The captioned irrigation claims should be modified as follows to accurately reflect historical use.

#### **Claim 41F 132631-00**

**MAXIMUM ACRES:**                      ~~68.80~~                                      **167.00**

**PLACE OF USE:**

**SEE MODIFIED ABSTRACT ATTACHED TO THIS MASTER'S REPORT.**

#### **Claim 41F 132633-00**

**MAXIMUM ACRES:**                      ~~30.80~~                                      **167.00**

**PLACE OF USE:**

**SEE MODIFIED ABSTRACT ATTACHED TO THIS MASTER'S REPORT.**

#### **Claim 41F 132634-00**

**MAXIMUM ACRES:**                      ~~37.00~~                                      **167.00**

**PLACE OF USE:**

**SEE MODIFIED ABSTRACT ATTACHED TO THIS MASTER'S REPORT.**

The issue remarks should be removed from the claim abstracts.

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**

Ryan K. Mattick, Esq.  
**Mattick Law Firm, P.C.**  
**ryan@matticklawfirm.com**  
~~Cusick, Farve, Mattick & Michael, P.C.~~  
~~PO Box 1288~~  
~~Bozeman, MT 59771-1288~~  
~~(406) 587-5511~~  
~~(406 587-9079 (fax)~~  
~~office@cmrlawmt.com~~

**Service List Updated 8/27/2025**

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

**Water Right Number:** 41F 132631-00 STATEMENT OF CLAIM

**Version:** 5 -- POST DECREE

**Status:** ACTIVE

**Owners:** T-L IRRIGATION CO  
PO BOX 1047  
HASTINGS, NE 68902-1047

**Priority Date:** JUNE 1, 1907

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 2.50 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:** 167.00

**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	4	NESWSW	19	7S	1W	MADISON

**Period of Diversion:** APRIL 15 TO NOVEMBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** KENNEDY DITCH

**Period of Use:** APRIL 15 TO NOVEMBER 15

**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	37.00		SWSW	20	7S	1W	MADISON
2	4.00		SESW	20	7S	1W	MADISON
3	10.00		NENW	29	7S	1W	MADISON
4	39.00		NWNW	29	7S	1W	MADISON
5	31.00		SWNW	29	7S	1W	MADISON
6	6.00		SENW	29	7S	1W	MADISON
7	3.00		NWSW	29	7S	1W	MADISON
8	31.00		NENE	30	7S	1W	MADISON
9	6.00		SENE	30	7S	1W	MADISON
<b>Total:</b>	167.00						

---

**Remarks:**



AUTHORIZATION TO CHANGE (SEVER/SELL) THE PLACED OF USE COMPLETED 09/03/1992 . FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE.

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

**Water Right Number:** 41F 132633-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** T-L IRRIGATION CO  
PO BOX 1047  
HASTINGS, NE 68902-1047

**Priority Date:** NOVEMBER 3, 1903

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.88 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:** 167.00

**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	4	NESWSW	19	7S	1W	MADISON

**Period of Diversion:** APRIL 15 TO NOVEMBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** KENNEDY DITCH

**Period of Use:** APRIL 15 TO NOVEMBER 15

**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	37.00		SWSW	20	7S	1W	MADISON
2	4.00		SESW	20	7S	1W	MADISON
3	10.00		NENW	29	7S	1W	MADISON
4	39.00		NWNW	29	7S	1W	MADISON
5	31.00		SWNW	29	7S	1W	MADISON
6	6.00		SENW	29	7S	1W	MADISON
7	3.00		NWSW	29	7S	1W	MADISON
8	31.00		NENE	30	7S	1W	MADISON
9	6.00		SENE	30	7S	1W	MADISON

**Total:** 167.00

---

**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.

132621-00

132633-00

AUTHORIZATION TO CHANGE (SEVER/SELL) THE PLACE OF USE COMPLETED 09/03/1992 . FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE.

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

**Water Right Number:** 41F 132634-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** T-L IRRIGATION CO  
PO BOX 1047  
HASTINGS, NE 68902-1047

**Priority Date:** MAY 1, 1907

**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:** 167.00

**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	4	NESWSW	19	7S	1W	MADISON

**Period of Diversion:** APRIL 15 TO NOVEMBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** KENNEDY DITCH

**Period of Use:** APRIL 15 TO NOVEMBER 15

**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	37.00		SWSW	20	7S	1W	MADISON
2	4.00		SESW	20	7S	1W	MADISON
3	10.00		NENW	29	7S	1W	MADISON
4	39.00		NWNW	29	7S	1W	MADISON
5	31.00		SWNW	29	7S	1W	MADISON
6	6.00		SENW	29	7S	1W	MADISON
7	3.00		NWSW	29	7S	1W	MADISON
8	31.00		NENE	30	7S	1W	MADISON
9	6.00		SENE	30	7S	1W	MADISON

**Total:** 167.00

---

**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.

132620-00

132634-00

AUTHORIZATION TO CHANGE (SEVER/SELL) THE PLACE OF USE COMPLETED 09/03/1992 . FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE.