

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

CLAIMANTS: HRMT Land LLC; State of Montana (Board of
Land Commissioners)

CASE 41F-0133-R-2025
41F 30114717
41F 30106559

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

State of Montana (Board of Land Commissioners) ("SBLC") stock claim 41F 30106559 received the following issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41F DECREE ISSUED 07/17/1984.

HRMT Land LLC stock claim 41F 30114717 received the following issue remarks:

CLAIM NOS. 41F 30114717 AND 41F 30106559 APPEAR TO BE DUPLICATE CLAIMS ON THE SAME HISTORIC APPROPRIATION OF WATER. CLAIM NO. 30114717 REFLECTS A PRIORITY DATE OF 9/29/1888 AND CLAIM NO. 30106559 REFLECTS A PRIORITY DATE OF 11/8/1889. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.

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

THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE. PART OF THE PLACE OF USE APPEARS TO BE ON STATE LAND.

Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination. Montana law requires the Water Court to resolve issue remarks.

On May 30, 2025, SBLC filed a Notice of Statement of Non-Interest.

Issue

Are the issue remarks on the claims resolved?

Finding of fact

The Preliminary Decree abstracts for stock claims 41F 30106559 and 41F 30114717 accurately reflect historical use.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right or an amended claim for Existing Water 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 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. 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.

5. 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.

6. “The first in time is the first in right, and multiple persons may therefore perfect claims to water from the same source as is the case across the breadth of our State.” *BLM v. Barthelmess Ranch Corp.*, 2016 MT 348, ¶ 39, 386 Mont. 121, 133, 386 P.3d 952, 961.

Analysis

Resolution of issue remarks

The ownership issue remark on claim 41F 30114717 provided notice to potential owner SBLC, that it may have an ownership interest in the claim. SBLC filed a statement of non-interest, thereby confirming its lack of ownership interest in the claim.

SBLC’s Statement of Non-Interest agrees that claims 41F 30106559 and 41F 30114717 have overlapping places of use. SBLC cites to *BLM v. Barthelmess Ranch*

Corp., 2016 MT 348, 386 Mont. 121, 386 P.3d 952, where the Montana Supreme Court held that Montana water law has long recognized the appropriation of water by different parties from the same source. Both SBLC and HRMT Land LLC may claim the same source. When the appropriations are for livestock direct from source, it necessarily results in overlapping places of use because the place of use is the source. There is no issue to resolve.

Claim 41F 30114717 received an issue remark stating the claims appear to be duplicates. The claims do not claim the same priority date. The claims are not duplicate claims.

Each of the captioned stock claims are existing rights for instream flow and are timely filed exempt claims. Section 85-2-222(1), MCA. In 2013 and 2017, the Montana Legislature amended § 85-2-222, MCA, and provided for the filing of exempt claims subject to specified terms and conditions. The claims 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.

Water users were given the opportunity to review the claims and file an objection. The deadline to file objections has expired. No objections were filed against the claims.

Conclusions of law

The issue remark concerning potential ownership by the State of Montana appearing on stock claim 41F 30114717 is resolved.

The overlapping place of use issue remark appearing on stock claim 41F 30114717 does not raise a valid issue that requires resolution by the court.

Stock claims 41F 30106559 and 41F 30114717 are not duplicate claims. The duplicate claim issue remark on claim 41F 30114717 is resolved.

The issue remark concerning lack of the claims' inclusion in the previous decree served its notice purpose.

Recommendations

Stock claims 41F 30106559 and 41F 30114717 accurately reflect historical use.
No changes to the elements of the claims should be made.

The issue remarks should be removed from the claim abstracts.

Post Decree Abstracts of Water Right Claim accompany this report to confirm removal of the issue remarks 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 30106559 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
FORESTRY AND TRUST LANDS DIVISION
PO BOX 201601
HELENA, MT 59620-1601

Priority Date: NOVEMBER 8, 1889

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 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		NW	16	1S	2E	GALLATIN

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			NW	16	1S	2E	GALLATIN

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

Water Right Number: 41F 30114717 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: HRMT LAND, LLC
101 N MAIN STREET, SUITE 410
ANN ARBOR, MI 48104

Priority Date: SEPTEMBER 29, 1888

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.

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1		NENENE	20	1S	2E	GALLATIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		NWNENE	20	1S	2E	GALLATIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		SWNENE	20	1S	2E	GALLATIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		NWSENE	20	1S	2E	GALLATIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		SESESE	17	1S	2E	GALLATIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
6		NESESE	17	1S	2E	GALLATIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

7	NWSWSW	16	1S	2E	GALLATIN
Period of Diversion:		JANUARY 1 TO DECEMBER 31			
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE			
8	SWNWSW	16	1S	2E	GALLATIN
Period of Diversion:		JANUARY 1 TO DECEMBER 31			
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE			
9	NWNWSW	16	1S	2E	GALLATIN
Period of Diversion:		JANUARY 1 TO DECEMBER 31			
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE			
10	SESWNW	16	1S	2E	GALLATIN
Period of Diversion:		JANUARY 1 TO DECEMBER 31			
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE			
11	NESWNW	16	1S	2E	GALLATIN
Period of Diversion:		JANUARY 1 TO DECEMBER 31			
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE			
12	SENWNW	16	1S	2E	GALLATIN
Period of Diversion:		JANUARY 1 TO DECEMBER 31			
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE			
13	SWNENW	16	1S	2E	GALLATIN
Period of Diversion:		JANUARY 1 TO DECEMBER 31			
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE			
14	NWNENW	16	1S	2E	GALLATIN
Period of Diversion:		JANUARY 1 TO DECEMBER 31			
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE			
15	NENENW	16	1S	2E	GALLATIN
Period of Diversion:		JANUARY 1 TO DECEMBER 31			
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE			
16	SESESW	9	1S	2E	GALLATIN
Period of Diversion:		JANUARY 1 TO DECEMBER 31			
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE			
17	NESESW	9	1S	2E	GALLATIN
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			NENENE	20	1S	2E	GALLATIN
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6			NESESE	17	1S	2E	GALLATIN
7			NWSWSW	16	1S	2E	GALLATIN

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9	NWNWSW	16	1S	2E	GALLATIN
10	SESWNW	16	1S	2E	GALLATIN
11	NESWNW	16	1S	2E	GALLATIN
12	SENWNW	16	1S	2E	GALLATIN
13	SWNENW	16	1S	2E	GALLATIN
14	NWNENW	16	1S	2E	GALLATIN
15	NENENW	16	1S	2E	GALLATIN
16	SESESW	9	1S	2E	GALLATIN
17	NESESW	9	1S	2E	GALLATIN