

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: Charles B. Carter; Sandra E. Carter

OBJECTOR: United States of America (Bureau of Reclamation)

**CASE 41F-0143-R-2025**  
41F 3508-00

**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 United States of America (Bureau of Reclamation) (“BOR”) filed an objection to the volume identified by fish and wildlife claim 41F 3508-00. The claim also received issue remarks concerning volume, point of diversion, and period of diversion. Issue remarks result from Department of Natural Resources and Conservation claims examination. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

On May 21, 2025, the parties filed a Stipulation to Resolve Objections. Montana law requires the Water Court to resolve issue remarks and objections.

### **Issue**

1. Should the court accept the stipulated terms?
2. Are the issue remarks resolved?

### **Findings of fact**

1. The historically accurate volume for claim 41F 3508-00 should be 8.00 AF.
2. No water users filed objections to the point of diversion or period of diversion identified by the claim. No modifications to these elements should be made.

### **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. The Montana Water Court may accept a settlement agreement that reduces or limits an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), 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.

## **Analysis**

### **Issue 1 – acceptance of stipulated terms**

The parties stipulated to reducing the volume for fish and wildlife claim 41F 3508-00.

### **Conclusions of law**

The evidence entered into the record is a reduction within the parameters of statement of claim 41F 3508-00, justifies the modification to the claim, and resolves the BOR’s objection to the claim. The stipulated terms should be accepted by the court.

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

Claim 41F 3508-00 appeared in the Preliminary Decree with the following issue remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

POINT OF DIVERSION 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.

CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Water users were given the opportunity to review the claim and file an objection to the noted elements. The deadline to file objections expired. The only objection filed to the claim was resolved during these case proceedings.

## **Conclusions of law**

The referenced issue remarks served their notice purpose.

## **Recommendations**

Fish and wildlife claim 41F 3508-00 should be modified as follows to accurately reflect historical use.

**VOLUME:**                      91.25 AF                      8.00 AF

The issue remarks 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 USPS Mail**

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**Service List Updated 8/5/2025**

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

**Water Right Number:** 41F 3508-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** CHARLES B CARTER  
PO BOX 1436  
4475 US HWY 287 N  
ENNIS, MT 59729

SANDRA E CARTER  
PO BOX 1436  
4475 US HWY 287 N  
ENNIS, MT 59729

**Priority Date:** JANUARY 12, 1971

**Type of Historical Right:** FILED

**Purpose (Use):** FISH AND WILDLIFE

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

**Volume:** 8.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF BEAR CREEK

**Source Type:** SURFACE WATER

ALSO KNOWN AS UNNAMED TRIBUTARY OF LOWER BEAR CREEK AND SPRING NO. 2.

**\*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		NESWNW	23	6S	1W	MADISON

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

**Diversion Means:** DAM

**\*Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNW	23	6S	1W	MADISON

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 13.00 FEET

**Depth:** 10.00 FEET

**Surface Area:** 1.00 ACRES

**Capacity:** 4.00 ACRE-FEET

**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			SESWNW	23	6S	1W	MADISON
Subdivision:		SEE REMARK FOR SUBDIVISION INFORMATION					

Remarks:

MA-SHEFFIELDS LOWER BEAR CREEK ACRES.