

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: Antoinette C. Scully; John P. Scully

OBJECTORS: Antoinette C. Scully; John P. Scully

NOTICE OF INTENT TO APPEAR: PN Madison LLC

CASE 41F-0183-R-2025
41F 30125945

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

John P. Scully and Antoinette C. Scully ("Scullys") stock claim 41F 30125945 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.

Issue remarks most often result from Department of Natural Resources and Conservation ("DNRC") claims examination. An issue remark may simply provide notice to water users concerning a claim, as does the above noted issue remark.

The claim received a self-objection from Scullys stating, "The original claim form indicates that the source of this stockwater right is actually comprised of two sources: 1) O'Dell Creek, and 2) an Undeveloped Spring, tributary to O'Dell Creek. The preliminary decree states that the source is O'Dell Creek. An implied water right claim for stockwater use should be decreed by the Water Court recognizing the Undeveloped Spring source that is part of the claimed right."

PN Madison, LLC filed a notice of intent to appear for the claim.

Montana law requires the Water Court to resolve issue remarks, objections, and notices of intent to appear.

Scullys, by and through counsel of record, Michael J. L. Cusick, filed a Motion Requesting Addition of Source Name Clarification Remark. PN Madison, LLC did not oppose the motion.

Issues

1. Should the source name clarification remark be added to the claim, thereby resolving the objection to and notice of intent to appear for the claim?
2. Is the notice issue remark on the claim resolved?

Finding of fact

A source name clarification remark should be added to stock claim 41F 30125945 stating:

THE SOURCE ALSO INCLUDES AN UNDEVELOPED SPRING TRIBUTARY TO O'DELL CREEK LOCATED IN THE E2SWNE OF SECTION 34, T5S, R1W MADISON COUNTY.

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.

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 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 Water Court may add clear and unambiguous information remarks to a claim abstract that describe historical use and reduce the possibility of future conflict. *See Clark Fork Coalition v. Hirsch*, 2014 Mont. Water LEXIS 15 at **10-14 (Oct. 29, 2014).

Analysis

Issue 1 – source name clarification remark; resolution of objection and notice of intent to appear

Scullys assert the source names identified by statement of claim 41F 30125945 are historically accurate. Stock statement of claim 41F 30125945 identified two sources – O'Dell Creek and an undeveloped spring. Scullys proposed adding a source name

clarification remark instead of generating an implied claim for the undeveloped spring. The source names should match those identified by the prima facie statement of claim.

Scullys' Motion and a map depicting the two sources may be viewed on the court's case management system, FullCourt Enterprise, at document sequence 2.00.

Conclusions of law

The source name clarification remark is supported by prima facie statement of claim 41F 30125945. The source name clarification remark describes historical use and reduces the possibility of future conflict.

The record before the court justifies the modification proposed by Scullys and resolves their objection to the claim, and resolves PN Madison, LLC's notice of intent to appear for the claim.

Issue 2 – issue remark resolution

Stock claim 41F 30125945 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.

The foregoing issue remark provided the opportunity for water users to object to the claim. The only objection to and notice of intent to appear for the claim are resolved by these proceedings.

Conclusion of law

The issue remark appearing on the claim served its notice purpose.

Recommendations

Stock claim 41F 30125945 should be modified as follows to accurately reflect historical use.

ADD SOURCE NAME CLARIFICATION REMARK:

THE SOURCE ALSO INCLUDES AN UNDEVELOPED SPRING TRIBUTARY TO O'DELL CREEK LOCATED IN THE E2SWNE OF SECTION 34, T5S, R1W MADISON COUNTY.

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

Michael J. L. Cusick
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Service List Updated 8/5/2025

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

Water Right Number: 41F 30125945 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: ANTOINETTE C SCULLY
PO BOX 986
ENNIS, MT 59729-0986

JOHN P SCULLY
PO BOX 986
ENNIS, MT 59729-0986

Priority Date: JUNE 15, 1877

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 STOCKWATERING 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: ODELL CREEK

Source Type: SURFACE WATER

THE SOURCE ALSO INCLUDES AN UNDEVELOPED SPRING TRIBUTARY TO O'DELL CREEK LOCATED IN THE E2SWNE OF SECTION 34, T5S, R1W MADISON COUNTY.

***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		SWNE	34	5S	1W	MADISON

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		NWSE	34	5S	1W	MADISON
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Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: MAY 1 TO NOVEMBER 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			SWNE	34	5S	1W	MADISON
2			NWSE	34	5S	1W	MADISON