

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

CLAIMANT: Alton Living Trust

OBJECTOR: Alton Living Trust

NOTICE OF INTENT TO APPEAR: United States of America
(Bureau of Reclamation)

ON MOTION OF THE MONTANA WATER COURT

CASE 41F-0011-R-2024

41F 122699-00

41F 122703-00

41F 122704-00

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 Water Court issued two decrees for Basin 41F - the Temporary Preliminary Decree in 1984 and the Preliminary Decree in 2023.

The captioned claims received self-objections from claimant Alton Living Trust. These objections were unconditionally withdrawn. The United States of America (Bureau of Reclamation) filed a notice of intent to appear for claims 41F 122703-00 and 41F 122704-00.

The captioned claims appeared in the Preliminary Decree with issue remarks. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. Issue remarks may also provide notice to water users concerning a claim.

Stock Claim 41F 122699-00

MEANS 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.

Irrigation Claim 41F 122703-00

DITCH NAME 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.

Irrigation Claim 41F 122704-00

A STIPULATION WAS FILED SPECIFYING A CHANGE IN THE PRIORITY DATE. THIS HAS BEEN DOCKETED AS A LATE OBJECTION AND WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

DITCH NAME 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.

Montana law requires the Water Court to resolve objections, notices of intent to appear, and issue remarks. While reviewing the issue remark on claim 41F 122704-00, it came to the Master's attention that multiple uses of the claimed water right exist. Multiple uses of a water right occur when one water right is used for more than one purpose. In this case the multiple uses of the water right are identified by stock claim 41F 122699-00 and irrigation claim 41F 122704-00. Stock claim 41F 122699-00 did not receive the priority date issue remark although stock claim 41F 122699-00 and irrigation claim 41F 122704-00 are for the same water right. Pursuant to Rule 8, W.R.Adj.R., the court may call in a claim or certain elements of a claim to determine whether the claim or certain elements of the claim accurately reflect pre-July 1, 1973 beneficial use. As directed by Rule 8, W.R.Adj.R., when a claim is called in on motion of the court, the procedures outlined in Section 85-2-248, MCA shall be followed. Based upon the foregoing, the priority date for multiple use stock claim 41F 122699-00 is called in on motion of the court.

Issues

1. Are the issue remarks resolved?
2. Is the court's on motion concern for stock claim 41F 122699-00 resolved?

Findings of fact

1. The historically accurate priority date for multiple use irrigation claim 41F 122704-00 and multiple use stock claim 41F 122699-00 is September 21, 1880.
2. The Preliminary Decree abstracts for each claim in this case identify the historically accurate ditch name. The Preliminary Decree abstract for claim 41F 122699-00 identifies the historically accurate means of diversion.

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, the burden of proof must be met. If evidence does not meet the burden of proof, the element shall not be expanded or enlarged. Rule 17(b), W.R.Adj.R.

5. According to Rule 8, W.R.Adj.R., the Court may call in a claim/elements of a claim to determine whether its elements accurately reflect pre-July 1, 1973 beneficial use. As directed by Rule 8, W.R.Adj.R., when a claim is called in on motion of the Court, the procedures outlined in § 85-2-248, MCA shall be followed.

6. 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.

7. 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

Issues 1 and 2 - issue remark resolution and on motion resolution

A predecessor in interest to Alton Living Trust stipulated to the same modified

priority date for three claims all claiming the first water right on Warm Spring Creek aka Blaine Spring Creek decreed to Valley Garden Ranch Co. in Case No. 5526, *Win-Del Ranches, et al. v. Lehman Ranch Company*, Fifth Judicial District, Madison County. (See claim file 41F 122704-00.) The three claims involved in the stipulation all claimed the same water right decreed with a priority date of “Fall 1880” by the district court. During claims examination for issuance of the Temporary Preliminary Decree, the DNRC modified the claimed priority date of Fall 1880 to December 19, 1880. The parties stipulated that all three water rights should instead identify a priority date of September 21, 1880. The Water Court adopted this stipulated priority date for one of the three claims, 41F 31227-00, during Temporary Preliminary Decree proceedings. (See claim file 41F 31227-00 May 23, 1991 Master’s Report, Case 41F-61 and Jul. 3, 1991 Order Correcting and Adopting Master’s Report.) The Water Court added a notice issue remark concerning the stipulated priority date to the other two similarly situated irrigation claims, including an irrigation claim in this case, 41F 122704-00.

The priority date for claim 41F 122704-00 should be modified to September 21, 1880, to implement the stipulated agreement of Alton Living Trust’s predecessor in interest and to reflect the stipulated modified priority date already adopted by the court for one of the three claims included in the stipulation. Furthermore, the priority date for multiple use stock claim 41F 122699-00 and multiple use irrigation claim 41F 122704-00 should match. Water users in Basin 41F were given notice via the Objection List that the priority date for multiple use stock claim 41F 122699-00 and multiple use irrigation claim 41F 122704-00 may be modified.

The means of diversion and ditch name issue remark on stock claim 41F 122699-00 and the ditch name issue remark on irrigation claims 41F 122703-00 and 41F 122704-00 instructed claimant and other water users that if no objections were filed to the modifications, these elements would remain as they appear on the Preliminary Decree abstracts. No one objected to the ditch name for these claims. Alton Living Trust unconditionally withdrew its objection to means of diversion for stock claim 41F 122699-00.

Conclusions of law

The court previously adjudicated the priority date stipulated to by Alton Living Trust's predecessor in interest finding the priority date to be historically accurate. The priority date for claims 41F 122699-00 and 41F 122704-00 should reflect the priority date stipulated to by Alton Living Trust's predecessor in interest.

The priority date, means of diversion, and ditch name issue remarks served their notice purpose.

Alton Living Trust's objections were unconditionally withdrawn. The court's on motion concern for stock claim 41F 122699-00 is resolved.

If the United States of America (Bureau of Reclamation's) notice of intent to appear is not resolved by these proceedings, it should object to this Master's Report.

Recommendations

Multiple use stock claim 41F 122699-00 and irrigation claim 41F 122704-00 should be modified as follows to accurately reflect historical use.

PRIORITY DATE: ~~DECEMBER 19, 1880~~ **SEPTEMBER 21, 1880**

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

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

Water Right Number: 41F 122699-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ALTON LIVING TRUST
PO BOX 4029
WESTLAKE VILLAGE, CA 91359

Priority Date: SEPTEMBER 21, 1880

Type of Historical Right: DECREED

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: BLAINE 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		SENESE	18	7S	1W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: THEXTON DITCH

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			E2	30	6S	1W	MADISON
2			W2	29	6S	1W	MADISON
3			SW	20	6S	1W	MADISON
4			SE	19	6S	1W	MADISON

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.

122699-00

122704-00

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

Water Right Number: 41F 122703-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ALTON LIVING TRUST
PO BOX 4029
WESTLAKE VILLAGE, CA 91359

Priority Date: MAY 1, 1882

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/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: 183.50

Source Name: BLAINE 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		SENESE	18	7S	1W	MADISON

Period of Diversion: MAY 15 TO AUGUST 31

Diversion Means: HEADGATE

Ditch Name: THEXTON DITCH

Period of Use: MAY 15 TO AUGUST 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	57.20		E2NE	30	6S	1W	MADISON
2	79.80		SE	30	6S	1W	MADISON
3	3.50		SESESE	19	6S	1W	MADISON
4	4.00		SWSWSW	20	6S	1W	MADISON
5	39.00		W2W2NW	29	6S	1W	MADISON

Total: 183.50

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.

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

Water Right Number: 41F 122704-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ALTON LIVING TRUST
PO BOX 4029
WESTLAKE VILLAGE, CA 91359

Priority Date: SEPTEMBER 21, 1880

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 3.75 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: 183.50

Source Name: BLAINE 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		SENESE	18	7S	1W	MADISON

Period of Diversion: MAY 15 TO AUGUST 31

Diversion Means: HEADGATE

Ditch Name: THEXTON DITCH

Period of Use: MAY 15 TO AUGUST 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	57.20		E2NE	30	6S	1W	MADISON
2	79.80		SE	30	6S	1W	MADISON
3	3.50		SESESE	19	6S	1W	MADISON
4	4.00		SWSWSW	20	6S	1W	MADISON
5	39.00		W2W2NW	29	6S	1W	MADISON

Total: 183.50

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.

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.

122699-00

122704-00