

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: Germann Ranch Inc.

OBJECTOR: Audrey Lin

NOTICE OF INTENT TO APPEAR: Germann Ranch Inc.

CASE 41F-0110-R-2024

41F 7051-00

41F 7052-00

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. To prepare the Preliminary Decree for issuance, the Water Court ordered the Department of Natural Resources and Conservation ("DNRC") to standardize points of diversion, ditch names, and sources, and to add an issue remark to claims noting such modifications.

Germann Ranch Inc. irrigation claims 41F 7051-00 and 41F 7052-00 appeared in the Preliminary Decree with the following issue remark:

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.

The issue remark instructed claimant and other water users that if no objections were filed to the modification, the point of diversion would remain as it appeared on the Preliminary Decree abstract.

The captioned claims received an objection to volume from co-owner of Germann Ranch Inc. Audrey Lin and a notice of intent to appear from Germann Ranch Inc. signed by Ms. Lin. The objection and notice of intent to appear include the same information.

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

Issues

The Preliminary Decree abstracts include the standard volume information remark placed on direct flow irrigation claims. Audrey Lin contends the volume information remark should instead reflect the language from Conclusion of Law II of the 1991 Master's Report issued for these claims.

1. Are Audrey Lin's objection to and Germann Ranch Inc.'s notice of intent to appear concerning the claims' volume resolved?
2. Is the issue remark concerning point of diversion on the claims resolved?

Findings of Fact

1. A Master's Report, adopted by the court April 10, 1991, removed the quantified volume from these irrigation claims and added the standardized volume information remark reflected by the Preliminary Decree abstracts. (*See* Mar. 20, 1991 Master's Report and Apr. 10, 1991 Order Adopting Master's Report.)

2. The Preliminary Decree abstracts reflect the historically accurate point 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. 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.

4. 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 – objection, notice of intent to appear, and issue remark resolution

Each direct flow irrigation claim abstract includes the standardized volume information remark previously added by the Water Court:

THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Ms. Lin requests to remove the standard volume information remark from the face of each direct flow irrigation claim abstract and replace the language with Conclusion of Law II from the 1991 Master's Report adopted by the court. Volume would then appear as:

THE VOLUME QUANTIFICATION SHALL BE REMOVED FROM THESE DIRECT FLOW IRRIGATION CLAIMS AS SPECIFIED BY SECTION 85-2-234(6)(b)(i), MCA.

Conclusion of Law II is the basis for removing quantified volumes from direct flow irrigation claims. The standard volume information remark currently appearing on each claim is added to direct flow irrigation claims pursuant to the above cited statute and Montana Supreme Court Water Right Claim Examination Rule 15(c). Based upon statute and rule, the standard volume information remark should remain on the abstracts.

The notice issue remark concerning point of diversion provided the opportunity for claimant and other water users to object to the claim. Audrey Lin filed the only objection to the irrigation claims. Ms. Lin did not object to the point of diversion modification.

Conclusions of law

The standardized volume information remark on irrigation claims 41F 7051-00 and 41F 7052-00 should not be modified. **If Ms. Lin and Germann Ranch Inc. disagree with this conclusion of law, they should object to this Master's Report so a water judge may make the determination about modifying the standardized volume information remark language.¹**

The point of diversion issue remark served its notice purpose.

¹ A status conference was held with Ms. Lin explaining the foregoing and explaining Ms. Lin's option to object to this Master's Report.

Recommendations

No changes should be made to the elements of irrigation claims 41F 7051-00 and 41F 7052-00.

The point of diversion issue remark 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

Germann Ranch Inc.
Audrey Lin
PO Box 158
McAllister, MT 59740
audreylin@hotmail.com

Note: Service List Updated 2/19/2025

\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Datavol)\Share\WC-BASIN FOLDERS\41F PD\Cases\110R\MR--41F-110R sjs.docx 2/19/25

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

Water Right Number: 41F 7051-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GERMANN RANCH INC
PO BOX 158
MCALLISTER, MT 59740

Priority Date: MAY 1, 1903

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: 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: 126.00

Source Name: NORTH MEADOW 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		SWNESW	2	4S	2W	MADISON

Period of Diversion: MAY 15 TO AUGUST 1

Diversion Means: HEADGATE

Ditch Name: NUGGET DITCH

Period of Use: MAY 15 TO AUGUST 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	40.00		NENE	13	4S	2W	MADISON
2	40.00		SENE	13	4S	2W	MADISON
3	15.00		NWNE	13	4S	2W	MADISON
4	15.00		SWNE	13	4S	2W	MADISON
5	16.00		NESE	13	4S	2W	MADISON

Total: 126.00

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 7052-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GERMANN RANCH INC
PO BOX 158
MCALLISTER, MT 59740

Priority Date: JULY 17, 1878

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: 126.00

Source Name: NORTH MEADOW 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		SWNESW	2	4S	2W	MADISON

Period of Diversion: APRIL 15 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: NUGGET DITCH

Period of Use: APRIL 15 TO OCTOBER 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	40.00		NENE	13	4S	2W	MADISON
2	40.00		SENE	13	4S	2W	MADISON
3	15.00		NWNE	13	4S	2W	MADISON
4	15.00		SWNE	13	4S	2W	MADISON
5	16.00		NESE	13	4S	2W	MADISON
Total:	126.00						

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.