

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: Wyatt H. Gibbs

CASE 41F-0119-R-2024
41F 14395-00

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

Wyatt H. Gibbs irrigation claim 41F 14395-00 appeared in the Preliminary Decree with the following issue remark:

UPON FURTHER REVIEW IT APPEARS THAT THE POINT OF DIVERSION WOULD BE BETTER DESCRIBED AS N2N2SW SEC 29 AND N2NWSE SEC 29 AND THE FOLLOWING REMARK ADDED TO CLARIFY IT FURTHER: "THE POINT OF DIVERSION IS THE FULL LENGTH OF THE COLLECTION DITCH."

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. In some instances, the Water Court adds an issue remark to a claim. For claim 41F 14395-00, the Water Court added the above noted issue remark after claims examination by the DNRC.

Montana law requires the Water Court to resolve issue remarks. The issue remark was not resolved through the objection process and while there appeared to be enough information in the claim file and before the court to resolve the issue remark, pursuant to § 85-2-248(11), MCA the court may not resolve an issue remark modifying an element without agreement from the claimant. Therefore, a deadline was set for Wyatt H. Gibbs to agree with or to file evidence resolving the issue remark.

Mr. Gibbs, by and through counsel, Matthew T. Meade, filed a Response to Proposed Issue Remark agreeing with the issue remark. This filing is deemed Mr. Meade's notice of appearance on behalf of Mr. Gibbs. Mr. Meade should be added to the service list and Mr. Gibbs removed from the service list as Mr. Gibbs is now represented.

Issues

1. What is the historically accurate point of diversion for irrigation claim 41F 14395-00?
2. Is the point of diversion issue remark on the claim resolved?

Findings of fact

A preponderance of evidence establishes the historically accurate point of diversion for irrigation claim 41F 14395-00 is the N2N2SW and the N2NWSE, Section 29, 4 South, 1 West, Madison County. An information remark should be added to the point of diversion stating:

THE POINT OF DIVERSION IS THE FULL LENGTH OF THE COLLECTION DITCH.

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.

5. 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

Issues 1 and 2 – point of diversion and point of diversion issue remark resolution

Mr. Gibbs' statement confirmed the historical accuracy of the point of diversion identified by the issue remark and agreed with adding the point of diversion information remark included in the issue remark.

Conclusions of law

The point of diversion issue remark, the information resulting in the issue remark, and Mr. Gibbs' statement in agreement with the issue remark overcomes, by a preponderance of evidence, the prima facie proof afforded the point of diversion for claim 41F 14935-00. The point of diversion issue remark is resolved.

The point of diversion information remark describes historical use and reduces the possibility of future conflict.

Recommendations

Irrigation claim 41F 14395-00 should be modified as follows to accurately reflect historical use.

POINT OF DIVERSION:

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
N2N2SW	NWNESE	29	4S	1W	MADISON
	N2NWSE	29	4S	1W	MADISON

ADD INFORMATION REMARK:

THE POINT OF DIVERSION IS THE FULL LENGTH OF THE COLLECTION DITCH.

The point of diversion 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 USPS Mail:

Last Order:

Wyatt H. Gibbs

PO Box 531

Three Forks, MT 59752

Service Via Electronic Mail:

Matthew T. Meade

Smith Oblander Meade & Mitcham, PC

PO Box 2685

Great Falls, MT 59403-2685

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Note: Service List Updated 2/19/2025

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

Water Right Number: 41F 14395-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: WYATT H GIBBS
PO BOX 531
THREE FORKS, MT 59752

Priority Date: DECEMBER 31, 1863

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

THIS RIGHT HAS ALSO BEEN HISTORICALLY USED FOR MINING, POWER GENERATION, STOCK AND DOMESTIC USES

Flow Rate: 5.42 CFS

***Volume:** 1,895.50 AC-FT

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 223.00

Source Name: GROUNDWATER

Source Type: GROUNDWATER

THE SOURCE IS NUMEROUS FLOWING ARTESIAN WELLS LOCATED WITHIN A COLLECTION DITCH.

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		N2N2SW	29	4S	1W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

2		N2NWSE	29	4S	1W	MADISON
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

THE POINT OF DIVERSION IS THE FULL LENGTH OF THE COLLECTION 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	80.00		W2SW	28	4S	1W	MADISON
2	80.00		N2SE	29	4S	1W	MADISON
3	63.00		W2NW	33	4S	1W	MADISON

Total: 223.00

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.

14391-00	14392-00	14393-00	14394-00	14395-00	14396-00
215641-00	215642-00				

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME POINT OF DIVERSION.

14395-00	14396-00
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THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE ASSOCIATED. THEY SHARE THE SAME COLLECTION DITCH. 41F 14395-00, 41F 14396-00.