

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: Beaver Dam Ranch LLC; Cashman Ranch LLC

**CASE 41F-0018-R-2024**

NOTICE OF INTENT TO APPEAR: Bring Em LLC

41F 117357-00

41F 132130-00

**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**

Irrigation claim 41F 117357-00 received the following issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NESENW SEC 31 TWP 4S RGE 1W MADISON COUNTY.

Bring Em LLC filed a notice of intent to appear for irrigation claim 41F 117357-00 “to monitor, and to the extent necessary, participate in resolution of the point-of-diversion issue remark...”

Stock claim 41F 132130-00 received the following issue remark:

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A FILED RIGHT.

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.

Montana law requires the Water Court to resolve issue remarks and notices of intent to appear. The issue remarks were not resolved through the objection process and while there appeared to be enough information in the claim files and before the court to resolve the issue remarks, pursuant to § 85-2-248(11), MCA the court may not resolve an issue remark modifying an element without agreement from the claimants. An order set a filing deadline for claimants to file their agreement with the modifications identified by the issue remarks or for claimants to file evidence supporting the historically accurate point of diversion for irrigation claim 41F 117357-00 and the historically accurate type of historical right for stock claim 41F 132130-00. The order stated that if claimants did not file comments by the deadline, it would be deemed claimants' agreement with the modifications proposed by the issue remark on each claim and that notice of intent to

appear party for claim 41F 117357-00, Bring Em LLC, would be provided time to comment on whether its concerns for claim 41F 117357-00 were resolved by resolution of the issue remark. Claimants did not file comments by the deadline.

An order set a filing deadline for Bring Em LLC to file a statement concerning whether its concerns were addressed by the modification proposed by the point of diversion issue remark appearing on irrigation claim 41F 117357-00. The order stated that if Bring Em LLC did not file a statement by the deadline, it would be deemed Bring Em LLC's agreement that its concerns were addressed by the modification proposed by the point of diversion issue remark on irrigation claim 41F 117357-00. Bring Em LLC did not file comments by the deadline.

### **Issues**

1. What is the historically accurate point of diversion for irrigation claim 41F 117357-00?
2. Is Bring Em LLC's notice of intent to appear for claim 41F 117357-00 resolved?
3. What is the historically accurate type of historical right for stock claim 41F 132130-00?

### **Findings of fact**

1. The historical point of diversion for irrigation claim 41F 117357-00 is the NESENW, Section 31, Township 4 South, Range 1 West.
2. Bring Em LLC's notice of intent to appear concerns for irrigation claim 41F 117357-00 are resolved.
3. The type of historical right is "filed" for stock claim 41F 132130-00.

## **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. This prima facie proof may be contradicted and 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. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. If a claimant fails to comply with an Order issued by the Court in its review of issue remarks, the Court may amend the claim to conform with information found in the claim file and information before the Court. Section 85-2-248(9)(a),(b), MCA.

6. Judicial notice of facts may be taken from a source “whose accuracy cannot be reasonably questioned.” Rule 201, M.R.Ev.

## **Analysis**

### **Issues 1 -3 – issue remark resolution and notice of intent to appear resolution**

Judicial notice is taken of the Basin 41F Preliminary Decree point of diversion index. All other Beaver Dam Ranch LLC claims utilizing the Remington Ditch, other than claim 41F 117357-00, identify the point of diversion legal land description identified by the issue remark. The point of diversion index may be viewed at:

[https://dnrc.mt.gov/\\_docs/water/adjudication/Decrees-2023/DECREE-41F-PODINDEX-23\\_0726.pdf](https://dnrc.mt.gov/_docs/water/adjudication/Decrees-2023/DECREE-41F-PODINDEX-23_0726.pdf)

Beaver Dam Ranch LLC's failure to provide any evidence to address or resolve the point of diversion issue remark on irrigation claim 41F 117357-00 leaves the information before the court and the modified point of diversion suggested by the issue remark as evidence of actual historical use.

Upon review of claim file 41F 132130-00, the statement of claim attachments include a filed notice of appropriation in support of the claim. In addition, all other claims in the multiple use information remark located at the end of the claim abstract, except claim 41F 132130-00, identify the type of historical right as "filed."

Beaver Dam Ranch LLC's and Cashman Ranch LLC's failure to provide any evidence to address or resolve the type of historical right issue remark on stock claim 41F 132130-00 leaves the information before the court and the modified type of historical right suggested by the issue remark as evidence of the type of historical right.

### **Conclusions of law**

Based on information in the claim file and information before the court, and Beaver Dam Ranch LLC's failure to comply with an order issued by the court, irrigation claim 41F 117357-00 should be amended as recommended by the issue remark and the order setting filing deadline. The point of diversion issue remark is resolved. The modified point of diversion and resolution of the point of diversion issue remark resolves the concerns of notice of intent to appear party Bring Em LLC.

Based on information in the claim file and information before the court, and

Beaver Dam Ranch LLC's and Cashman Ranch LLC's failure to comply with an order issued by the court, stock claim 41F 132130-00 should be amended as recommended by the issue remark and the order setting filing deadline. The type of historical right issue remark is resolved.

**Recommendations**

Based upon the foregoing, irrigation claim 41F 117357-00 should be amended as follows to accurately reflect historical use.

**POINT OF DIVERSION AND MEANS OF DIVERSION:**

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NESENW	NWSENW	31	4S	1W	MADISON

**Diversion Means:** HEADGATE  
**Ditch Name:** REMINGTON DITCH

Based upon the foregoing, stock claim 41F 132130-00 should be amended as follows to accurately reflect historical use.

**TYPE OF HISTORICAL RIGHT:**            USE    FILED

The issue remarks appearing on the claims should be removed.

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 USPS Mail**

Beaver Dam Ranch LLC  
~~% Timothy Cashman~~  
~~540 S Meadow Creek Rd~~  
~~McAllister MT 59740~~  
*(mail undeliverable)*

~~Potential Alternate Address:~~

Beaver Dam Ranch LLC  
1140 N Town Center Dr Ste 120  
Las Vegas NV 89144

Cashman Ranch LLC  
1140 N Town Center Dr Ste 120  
Las Vegas NV 89144

**Service via Electronic Mail**

Kirsa Shelkey  
Western Roots Law PLLC  
PO Box 1432  
Belgrade, MT 59714  
(406) 599-2087  
shelkey@westrootslaw.com

**Service List Updated 1/17/2025**

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

**Water Right Number:** 41F 117357-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BEAVER DAM RANCH LLC  
1140 N TOWN CENTER DR STE 120  
LAS VEGAS, NV 89144-0605

**\*Priority Date:** APRIL 1, 1917

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**\*Flow Rate:**

THE FLOW RATE OF THIS RIGHT SHALL BE CALCULATED ON A YEARLY BASIS. THE FLOW RATE SHALL BE 115.00 MINERS INCHES MINUS THE ESTIMATED CONVEYANCE LOSS FILED BY THE CLAIMANT WITH THE CLERK OF COURT, MADISON COUNTY, MONTANA AS ORDERED BY JUDGE W. W. LESSLEY ON JUNE 25, 1986 AND JULY 30, 1986 IN CAUSE NUMBER 1183, FIFTH JUDICIAL DISTRICT, MADISON COUNTY, MONTANA.

**\*Volume:** 754.02 AC-FT

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 125.00

**Source Name:** SOUTH MEADOW CREEK

**Source Type:** SURFACE WATER

THIS RIGHT IS LIMITED TO HIGH OR FLOOD WATERS OF SOUTH MEADOW CREEK.

**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		NESENW	31	4S	1W	MADISON

**Period of Diversion:** MAY 1 TO JULY 15

**Diversion Means:** HEADGATE

**Ditch Name:** REMINGTON DITCH

**Period of Use:** MAY 1 TO JULY 15

**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	50.00		S2NW	32	4S	1W	MADISON
2	55.00		N2NW	32	4S	1W	MADISON
3	20.00		N2SW	32	4S	1W	MADISON

**Total:** 125.00

**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.

117354-00

117355-00

117356-00

117357-00

117364-00

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

**Water Right Number:** 41F 132130-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BEAVER DAM RANCH LLC  
1140 N TOWN CENTER DR STE 120  
LAS VEGAS, NV 89144-0605

CASHMAN RANCH LLC  
1140 N TOWN CENTER DR STE 120  
LAS VEGAS, NV 89144

**Priority Date:** JUNE 20, 1885

**Type of Historical Right:** FILED

**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:** LEONARD 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		NWNW	27	4S	2W	MADISON

**Period of Diversion:** JUNE 1 TO SEPTEMBER 30

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JUNE 1 TO SEPTEMBER 30

**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			NWNW	27	4S	2W	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.

132111-00      132130-00      132133-00      132136-00