

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: TBLC Ltd.; United States of America (Bureau of
Land Management)

CASE 41F-0045-R-2024
41F 136460-00
41F 214425-00

OBJECTOR: TBLC Ltd.

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

TBLC Ltd. filed an objection to the point of diversion and place of use identified by its stock claim 41F 136460-00. The United States of America (Bureau of Land Management) ("BLM"), before issuance of the 2023 Preliminary Decree, filed an amendment proposing modifications to the point of diversion and place of use for its stock claim 41F 214425-00. There was not enough time to process BLM's amendment to its stock claim 41F 214425-00 before issuance of the 2023 Preliminary Decree. Therefore, the claim received the following issue remark, providing notice to other water users of the proposed amendment.

AN AMENDMENT WAS SUBMITTED ON 11/01/2022 REQUESTING TO AMEND THE POINT OF DIVERSION AND PLACE OF USE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

Montana law requires the Water Court to resolve issue remarks and objections. The court held a status conference to discuss TBLC Ltd.'s self-objection and the BLM's amendment.

Issues

1. Is TBLC Ltd.'s objection to its claim 41F 136460-00 resolved?
2. Is the amendment issue remark on BLM claim 41F 214425-00 resolved?

Findings of fact

1. The historically accurate point of diversion and place of use for stock claim 41F 136460-00 in the SE of Section 4, Township 8 South, Range 1 West should be refined to the E2SE of Section 4, Township 8 South, Range 1 West.
2. The historically accurate point of diversion and place of use for stock claim

41F 214425-00 should be the SW and SWSE of Section 28, Township 7 South, Range 1 West and the N2NE of Section 4, Township 8 South, Range 1 West.

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

5. The Montana Water Court may accept a settlement agreement that reduces or limits an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

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

Historical place of use and point of diversion and issue remark resolution

TBLC Ltd.'s predecessor in interest and the BLM previously stipulated to generation of an implied claim (41F 214425-00) from claim 41F 136460-00 and the points of diversion and places of use currently identified by each claim abstract. (*See* Case 41F-5, February 22, 1994 Master's Report and March 23, 1994 Order Adopting). The stipulated agreement adopted by the Water Court appeared to include clerical errors in some of the points of diversion and places of use identified for the BLM's implied claim 41F 214425-00.

Given the previous stipulated agreement, to ensure that the modifications proposed by TBLC's objection and the amendment proposed by the BLM were acceptable to both parties, the court held a status conference. Both parties agreed at the status conference that each other's proposed modifications to their respective points of diversion and places of use during these proceedings were acceptable.

Conclusions of law

The modifications proposed by each party to their respective claim are supported by and within the parameters of prima facie statement of claim 41F 136460-00 or are supported by the map attached to statement of claim 41F 136460-00, justify the modifications to each claim, resolve the objection filed by TBLC Ltd. to its claim 41F 136460-00, and resolve the amendment issue remark appearing on BLM claim 41F 214425-00.

Recommendations

The points of diversion and places of use for stock claim 41F 136460-00 and stock claim 41F 214425-00 should be modified as reflected on the abstracts attached to this report.

The amendment issue remark should be removed from the abstract of claim 41F 214425-00.

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 136460-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: TBLC LTD
PO BOX 1047
HASTINGS, NE 68902-1047

Priority Date: AUGUST 31, 1884

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 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:** MADISON RIVER

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NE	29	7S	1W	MADISON
Period of Diversion:	NOVEMBER 1 TO JUNE 1					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		NE	33	7S	1W	MADISON
Period of Diversion:	NOVEMBER 1 TO JUNE 1					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		SE	33	7S	1W	MADISON
Period of Diversion:	NOVEMBER 1 TO JUNE 1					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		E2SE	4	8S	1W	MADISON
Period of Diversion:	NOVEMBER 1 TO JUNE 1					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		S2NE	4	8S	1W	MADISON
Period of Diversion:	NOVEMBER 1 TO JUNE 1					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
Period of Use:	NOVEMBER 1 TO JUNE 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			NE	29	7S	1W	MADISON
2			NE	33	7S	1W	MADISON
3			SE	33	8S	1W	MADISON
4			E2SE	4	8S	1W	MADISON
5			S2NE	4	8S	1W	MADISON

Remarks:

IMPLIED CLAIM NO. 41F 214425-00 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

Water Right Number: 41F 214425-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101-4669

***Priority Date:** AUGUST 31, 1884

***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 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:** MADISON RIVER

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		SW	28	7S	1W	MADISON

Period of Diversion: NOVEMBER 1 TO JUNE 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		SWSE	28	7S	1W	MADISON
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Period of Diversion: NOVEMBER 1 TO JUNE 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3		N2NE	4	8S	1W	MADISON
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Period of Diversion: NOVEMBER 1 TO JUNE 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

***Period of Use:** NOVEMBER 1 TO JUNE 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			SW	28	7S	1W	MADISON
2			SWSE	28	7S	1W	MADISON
3			N2NE	4	8S	1W	MADISON

Remarks:

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41F 136460-00.