

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
(406) 586-4364  
1-800-624-3270  
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
MADISON RIVER BASIN (41F)  
PRELIMINARY DECREE

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CLAIMANT: United States of America (USDA Forest Service)

**CASE 41F-0118-R-2025**

41F 54295-00

OBJECTOR: United States of America (USDA Forest Service)

**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.

United States of America (USDA Forest Service) (“Forest Service”) stock claim 41F 54295-00 appeared in the Preliminary Decree with the following issue remark:

POINT OF DIVERSION, SOURCE NAME, AND PLACE OF USE 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.

The issue remark instructed claimant and other water users that if no objections were filed to the modifications, the identified elements would remain as they appeared on the Preliminary Decree abstract.

The Forest Service filed an objection to the point of diversion and place of use identified by the Preliminary Decree Abstract stating “Point of diversion and place of use ID No. 3 should be corrected to SWNW Section 32, T3S R2W.”

Montana law requires the Water Court to resolve objections and issue remarks.

## **Issues**

The Preliminary Decree abstract identifies the NWNW of Section 32, Township 3 South, Range 2 West for point of diversion and place of use ID No. 3. The Forest Service contends the abstract should identify the SWNW of Section 32, Township 3 South, Range 2 West for point of diversion and place of use ID No. 3.

1. Is the Forest Service’s objection to claim 41F 54295-00 resolved?
2. Is the issue remark concerning point of diversion, source name, and place of use on claim 41F 54295-00 resolved?

## **Finding of Fact**

The historically accurate legal land description for point of diversion and place of use ID No. 3 for stock claim 41F 54295-00 is the SWNW of Section 32, Township 3 South, Range 2 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. 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. Judicial notice of facts may be taken from a source “whose accuracy cannot be reasonably questioned.” Rule 201, M.R.Ev.

## **Analysis**

### **Issues 1 and 2 – point of diversion and place of use and issue remark resolution**

Judicial notice is taken of the Madison County Water Resources Survey (1954) (republished 1965) (“WRS”). WRS page 17 of Part II Maps Showing Irrigated Areas, depicts North Meadow Creek running through the SWNW of Section 32, Township 3 South, Range 2 West, not the NWNW of Section 32, Township 3 South, Range 2 West.

The Madison County Water Resources Survey and information in claim file 41F 54295-00 support the Forest Service’s objection. DNRC erred when it modified the point of diversion and place of use.

The notice issue remark concerning point of diversion, source name, and place of use provided the opportunity for claimant and other water users to object to the claim. The Forest Service filed the only objection to the point of diversion and place of use identified by irrigation claim 41F 54295-00. The Forest Service's objection is resolved by these proceedings.

### **Conclusions of law**

The evidence before the court justifies the modifications to the claim and resolves both the Forest Service's objection to claim 41F 54295-00 and the issue remark appearing on claim 41F 54295-00.

### **Recommendations**

Irrigation claim 41F 54295-00 should be modified as follows to accurately reflect historical use.

#### **POINT OF DIVERSION AND PLACE OF USE:**

**SEE MODIFIED ABSTRACT ATTACHED TO THIS REPORT.**

The 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 Email:**

Judith Coleman, Trial Attorney  
Natural Resources Section, ENRD  
US Department of Justice  
PO Box 7611  
Washington, D.C. 20044-7611  
Phone (202) 514-3553  
Fax (202) 305-0506  
judith.coleman@usdoj.gov  
montanabasins.enrd@usdoj.gov

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

**Water Right Number:** 41F 54295-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804-7203

**Priority Date:** OCTOBER 3, 1905

**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:** NORTH MEADOW CREEK

**Source Type:** SURFACE WATER

**\*Source Name:** UNNAMED TRIBUTARY OF 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		NE	5	4S	2W	MADISON

**\*Source Name:** UNNAMED TRIBUTARY OF NORTH MEADOW CREEK

**Period of Diversion:** JUNE 1 TO OCTOBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		SE	31	3S	2W	MADISON
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**Source Name:** NORTH MEADOW CREEK

**Period of Diversion:** JUNE 1 TO OCTOBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

3		SWNW	32	3S	2W	MADISON
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**Source Name:** NORTH MEADOW CREEK

**\*Period of Diversion:** JUNE 1 TO OCTOBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

4		W2E2NW	32	3S	2W	MADISON
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**Source Name:** NORTH MEADOW CREEK

**Period of Diversion:** JUNE 1 TO OCTOBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

5 6 4S 2W MADISON

**Source Name:** NORTH MEADOW CREEK

**Period of Diversion:** JUNE 1 TO OCTOBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

6 11 4S 3W MADISON

**Source Name:** NORTH MEADOW CREEK

**Period of Diversion:** JUNE 1 TO OCTOBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

7 N2 12 4S 3W MADISON

**Source Name:** NORTH MEADOW CREEK

**Period of Diversion:** JUNE 1 TO OCTOBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JUNE 1 TO OCTOBER 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			NE	5	4S	2W	MADISON
2			SE	31	3S	2W	MADISON
3			SWNW	32	3S	2W	MADISON
4			W2E2NW	32	3S	2W	MADISON
5				6	4S	2W	MADISON
6				11	4S	3W	MADISON
7			N2	12	4S	3W	MADISON