

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

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CLAIMANTS: RaeLeen Roadarmel; Jack Roadarmel

OBJECTORS: Jack O. Roadarmel, Jr.; RaeLeen Roadarmel

NOTICE OF INTENT TO APPEAR: Stephen P. McDonnell

**CASE 41F-0060-R-2024**

41F 32962-00

41F 211922-00

**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 32962-00 received the following issue remarks:

ON SEPTEMBER 6, 1985 HOWARD BLAKELY FILED A LATE OBJECTION TO THE ACRES IRRIGATED, SOURCE, POINT OF DIVERSION, VOLUME AND FLOW RATE. ON FEBRUARY 20, 1990 JACK O. ROADARMEL, JR. FILED A LATE OBJECTION TO THE PRIORITY DATE AND FLOW RATE. ON MAY 20, 1992 YOLANDA BLAKELY FILED A LATE OBJECTION TO THE VOLUME, PLACE OF USE, MAXIMUM ACRES, OVERLAPPING CLAIM, AND MEANS OF DIVERSION. THESE OBJECTIONS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

POINT OF DIVERSION AND DITCH NAME 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.

Irrigation claim 41F 211922-00 received the following issue remarks:

ON MAY 22, 1992 YOLANDA BLAKELY FILED A LATE OBJECTION TO THE PLACE OF USE, MAXIMUM ACRES, MEANS OF DIVERSION AND FLOW RATE. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

IT APPEARS THAT 198.70 ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS MAY EXIST WITH ACRES IRRIGATED, PLACE OF USE, FLOW RATE AND VOLUME.

ON FEBRUARY 22, 1990 JACK ROADARMEL, JR., FILED A WITHDRAWAL OF CLAIM CONTINGENT UPON ANOTHER CLAIM, 32962, BEING CHANGED. ALL PROCEEDINGS FOR 32962 ARE STAYED UNTIL PROPER NOTICE ON THE NEXT OBJECTION LIST.

THIS INTERBASIN TRANSFER CLAIM WAS NOT INCLUDED IN THE 41F BASIN TEMPORARY PRELIMINARY DECREE ISSUED 07/25/1984.

CLAIM FILED LATE 09/04/87. IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

DITCH NAME 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.

Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

Each of the captioned claims received at least one late objection. Jack Roadarmel maintained his late objection to the priority date and flow rate of claim 41F 32962-00.

Claim 41F 32962-00 also received a timely filed objection to the historical number of acres irrigated from William E. Roadarmel during Temporary Preliminary Decree proceedings. On August 6, 2002, the court issued an Order Staying Proceedings on William E. Roadarmel's timely filed objection until Preliminary Decree proceedings because the late objections and the timely filed objection raised common issues. RaeLeen Roadarmel and Jack Roadarmel ("Roadarmels") were substituted for objector William E. Roadarmel in these proceedings.

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

Pursuant to § 85-2-248(3), MCA, the court may contact claimants for further evidence to resolve issue remarks. On January 1, 2025, and March 11, 2025, Roadarmels filed explanations and evidence resolving their objections and the issue remarks. An order provided notice of intent to appear party Stephen P. McDonnell the opportunity to comment on the proposed resolution of issues in this case. On April 18, 2025, Stephen P. McDonnell filed a Statement that the proposed modifications resolved Mr. McDonnell's notice of intent to appear.

All elements of claim 41F 32962-00 modified by this Master's Report appeared on the Basin 41F Preliminary Decree objection list.

## **Issues**

1. Are the objections resolved?
2. Are the issue remarks resolved?
3. Is the notice of intent to appear resolved?

## **Findings of fact**

1. The historical basis of irrigation claim 41F 32962-00 is the Asa K. Stanton filed notice of appropriation. The Stanton filed notice of appropriation establishes that claim 41F 32962-00 should identify a priority date of June 1, 1881, for 2.50 CFS (100.00 miner's inches) of Rey Creek, and confirms a point of diversion and ditch in Section 33,

Township 2 North, Range 2 East, Gallatin County.

2. Irrigation claim 41F 32962-00 historically irrigated a 260.00-acre place of use with 160.00 acres in Section 22 and 100.00 acres in Section 27, Township 2 North, Range 2 East, Gallatin County.

3. Irrigation claim 41F 211922-00 should be dismissed.

### **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 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.

8. Late claim fees may be waived by the court. Rule 30, W.R.Adj.R.

## **Analysis**

### **Issues 1 and 3 – objection resolution and notice of intent to appear resolution**

The following procedural history, evidence in claim file 41F 32962-00, and the explanations and evidence filed by Roadarmels during these case proceedings, support the historical accuracy of the proposed modifications to irrigation claim 41F 32962-00.

- Irrigation statement of claim 41F 32962-00, filed by William E. Roadarmel and Jack Roadarmel, claimed a May 9, 1902 water right for 500.00 miner's inches of the Madison River diverted by ditch and "existing Rea Creek" for a 594.00-acre place of use, including 290.00 acres in Section 22, and 144.00 acres in the NW of Section 27.<sup>1</sup> Included in support of the statement of claim was a notice of appropriation filed by H.H. Sharman, et. al., (Burrell Ditch Company) for 5,000.00 miner's inches of the Madison River.
- On August 3, 1984, co-claimant William E. Roadarmel filed a timely objection to the acres irrigated by claim 41F 32962-00.
- On February 20, 1990, Jack O. Roadarmel, Jr. filed a late objection to the priority date and flow rate of claim 41F 32962-00 stating, "The wrong notice of app. was attached, so the priority date and flow rate need to be changed. I will be withdrawing the late claim # 211922." Attached to the objection was a notice of appropriation filed by A.F. Nichols, James Burrell, and Asa K. Stanton with a priority date of June 1, 1881, for 100.00 miner's inches of Rea Creek. The notice

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<sup>1</sup> The 160.00 acres claimed in Section 21 were removed from the claim during DNRC 1982 claims examination and are no longer at issue.

of appropriation identifies a point of diversion and ditch in Section 33, Township 2 North, Range 2 East.

- On March 9, 1994, Burrell Ditch Company and Jack O. Roadarmel filed a Stipulation, amending Burrell Ditch Company claim 41F 117284-00 to include Jack O. Roadarmel, Jr. as an owner and user of the Burrell Ditch Company and incorporating the flow rate, maximum acres, and place of use of claim 41F 32962-00 into claim 41F 117284-00. (See claim file 41F 32962-00 for the March 9, 1994 Stipulation.)
- Proceedings, including an evidentiary hearing for Burrell Ditch Company claim 41F 117284-00, were held after the March 9, 1994 Stipulation was filed with the court. A Master's Report issued for the Burrell Ditch Company, et. al. claim 41F 117284-00. *Burrell Ditch Co. v. Bohart*, Case 41F-20, (MT Water Court Master's Report Feb. 20, 1997.) On February 28, 1997, Jack Roadarmel Jr. filed an objection to the Master's Report stating that Burrell Ditch Company claim 41F 117284-00 should include additional irrigated acres from claim 41F 32962-00.
- Chief Water Judge Loble issued a Memorandum Opinion for Case 41F-20 finding that the historically accurate place of use for Burrell Ditch Company claim 41F 117284-00 should be amended to include an additional 140.00 acres for the Roadarmel place of use in the N2 of Section 27, Township 2 North, Range 2 East, Gallatin County from claim 41F 32962-00. *Burrell Ditch Co.*, Case 41F-20 at p. 12-14, (MT Water Court Memorandum Opinion May 31, 2000.)
- The January 6, 2025 Roadarmel Response explains and confirms that statement of claim 41F 32962-00 mistakenly identified and included the wrong notice of appropriation to support its historical beneficial use. The notice of appropriation filed by Asa K. Stanton attached in support of the February 20, 1990 late objection filed by Jack O. Roadarmel, Jr., is the notice of appropriation that should have been included with statement of claim 41F 32962-00 to support its historical beneficial use.
- The March 11, 2025 Roadarmel Response explained that DNRC examined claim

41F 32962-00 in 1982 and 1984. In 1982, DNRC reduced the acres irrigated from 290.00 to 284.00, and in 1984 DNRC further reduced the acres irrigated to 210.00. During a 1982 interview with DNRC, William E. Roadarmel confirmed ownership of the N2NW of Section 27, Township 2 North, Range 2 East, Gallatin County but did not mention the N2NE of Section 27, seemingly resulting in the further reduction of the acres irrigated in 1984 to 210.00. It appears the 1984 DNRC examination did not include all acres irrigated in the N2N2 of Section 27, Township 2 North, Range 2 East, Gallatin County.

- Roadarmels' March 11, 2025 Response provided a June 12, 1890 Abstract of Water Right and a 1971 Gallatin County tax receipt. The 1890 Abstract of Water Right identifies the place of use as the N2N2 of Section 27, Township 2 North, Range 2 East, Gallatin County. The 1971 tax receipt includes 144.00 acres in the N2N2 of Section 27, demonstrating that Roadarmels owned the N2N2 of Section 27, Township 2 North, Range 2 East, Gallatin County before July 1, 1973.

No other water user in the adjudication filed a timely statement of claim for the notice of appropriation filed by Asa K. Stanton, attached in support of the February 20, 1990 late objection filed by Jack O. Roadarmel, Jr. and also attached in support of late claim 41F 211922-00. Roadarmels filed late claim, 41F 211922-00, using the Stanton filed notice of appropriation as its historical basis, stating claim 41F 211922-00 would be withdrawn when the changes noted above were made to timely filed claim 41F 32962-00. Based upon acceptance of the proposed modifications to irrigation claim 41F 32962-00, irrigation claim 41F 211922-00 should be dismissed as requested by the Roadarmels.

Roadarmels' responses and their exhibits may be viewed on the court's case management system, FullCourt Enterprise, at document sequences 4.00 and 8.00.

### **Conclusions of law**

Roadarmels provided a preponderance of evidence supporting and establishing the historical basis and priority date, flow rate, and source for claim 41F 32962-00, thereby overcoming prima facie statement of claim 41F 32962-00.

Roadarmels' proposed modifications to point of diversion,<sup>2</sup> maximum acres irrigated, and place of use for claim 41F 32962-00 are reductions within the parameters of the statement of claim and justify the modifications to the claim.

Roadarmels' proposed modifications should be accepted by the court thereby resolving the Roadarmels' objections and resolving the concerns of notice of intent to appear party, Stephen P. McDonnell.

## **Issue 2 – issue remark resolution**

The court provided late objectors Howard Blakely, Yolanda Blakely, and Jack Roadarmel the opportunity to appear and prosecute their objections. Late objectors Howard Blakely and Yolanda Blakely did not appear. The court provided the Roadarmels the opportunity to assume the late objections. Roadarmels did not wish to assume the late objections filed by Howard Blakely and Yolanda Blakely. The court dismissed late objectors Howard Blakely and Yolanda Blakely and their objections. Roadarmels maintained the late objection filed by Jack Roadarmel and assumed the timely filed objection filed by William E. Roadarmel.

Water users were given the opportunity to review the claim and file an objection. The deadline to file objections expired. Claim 41F 32962-00 received no objections to ditch name or point of diversion.

## **Conclusions of law**

The late objections of Howard Blakely and Yolanda Blakely to claim 41F 32962-00 were dismissed. Roadarmels maintained Jack Roadarmel's late objection to claim 41F 32962-00 resolving the objection during these proceedings. The late objection issue remarks appearing on irrigation claim 41F 32962-00 are resolved.

The point of diversion and ditch name issue remark on irrigation claim 41F 32962-00 served its notice purpose.

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<sup>2</sup> Although Roadarmels did not assume the late objection to point of diversion, they did propose to modify point of diversion. The element appeared on the Preliminary Decree objection list for claim 41F 32962-00.



The dismissal of irrigation claim 41F 211922-00 moots the issue remarks appearing on the claim.

## Recommendations

Irrigation claim 41F 32962-00 should be modified as follows to accurately reflect historical use.

<b><u>PRIORITY DATE:</u></b>	<del>MAY 1, 1902</del>	<b>JUNE 1, 1881</b>
<b><u>FLOW RATE:</u></b>	<del>7.96 CFS</del>	<b>2.50 CFS</b>
<b><u>MAXIMUM ACRES:</u></b>	<del>240.00</del>	<b>260.00</b>
<b><u>SOURCE NAME:</u></b>	<del>MADISON RIVER</del>	<b>REY CREEK</b>

<b><u>POINT OF DIVERSION:</u></b>	<b><u>GOVT LOT</u></b>	<b><u>QTR SEC</u></b>	<b><u>SEC</u></b>	<b><u>TWP</u></b>	<b><u>RGE</u></b>	<b><u>COUNTY</u></b>
		<del>NENWNW</del>	<del>17</del>	<del>1S</del>	<del>2E</del>	<del>GALLATIN</del>
		<del>NWNWSW</del>	<del>9</del>	<del>1N</del>	<del>2E</del>	<del>GALLATIN</del>
		NWSENE	33	2N	2E	GALLATIN

<b><u>PLACE OF USE:</u></b>	<b><u>ACRES</u></b>	<b><u>GOVT LOT</u></b>	<b><u>QTR SEC</u></b>	<b><u>SEC</u></b>	<b><u>TWP</u></b>	<b><u>RGE</u></b>	<b><u>COUNTY</u></b>
	<del>140.00</del>			<del>22</del>	<del>2N</del>	<del>2E</del>	<del>GALLATIN</del>
	<b>30.00</b>		SWNW	<b>22</b>	<b>2N</b>	<b>2E</b>	<b>GALLATIN</b>
	<b>10.00</b>		SWSE	<b>22</b>	<b>2N</b>	<b>2E</b>	<b>GALLATIN</b>
	<b>120.00</b>		SW	<b>22</b>	<b>2N</b>	<b>2E</b>	<b>GALLATIN</b>
	<b>30.00</b>		NWNE	<b>27</b>	<b>2N</b>	<b>2E</b>	<b>GALLATIN</b>
	<del>70.00</del>		N2NW	<del>27</del>	<del>2N</del>	<del>2E</del>	<del>GALLATIN</del>
<b>TOTAL:</b>	<del>240.00</del> <b>260.00</b>						

The issue remarks should be removed from the abstract of claim 41F 32962-00.

Irrigation claim 41F 211922-00 should be dismissed from the adjudication. All issue remarks appearing on the claim are mooted by the dismissal of the claim. A *de minimis* amount of time was spent adjudicating late claim 41F 211922-00. The late claim fee assessment for claim 41F 211922-00 should be waived as authorized by Rule 30, W.R.Adj.R.

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**

RaeLeen Roadarmel  
Jack Roadarmel  
1150 Carpenter Rd  
Three Forks MT 59752

**Service via Electronic Mail**

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

**Water Right Number:** 41F 32962-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** JACK ROADARMEL  
1150 CARPENTER RD  
THREE FORKS, MT 59752  
  
RAELEEN ROADARMEL  
1150 CARPENTER RD  
THREE FORKS, MT 59752

**Priority Date:** JUNE 1, 1881

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/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:** 3 - MODERATE

**Maximum Acres:** 260.00

**Source Name:** REY 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		NWSENE	33	2N	2E	GALLATIN

**Period of Diversion:** APRIL 1 TO NOVEMBER 30

**Diversion Means:** HEADGATE

**Ditch Name:** ABBOTT DITCH

**Period of Use:** APRIL 1 TO NOVEMBER 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	30.00		SWNW	22	2N	2E	GALLATIN
2	10.00		SWSE	22	2N	2E	GALLATIN
3	120.00		SW	22	2N	2E	GALLATIN
4	30.00		NWNE	27	2N	2E	GALLATIN
5	70.00		N2NW	27	2N	2E	GALLATIN

**Total:** 260.00

**Remarks:**

THIS APPROPRIATION OF WATER TAKES WATER FROM THE MADISON RIVER DRAINAGE (BASIN 41F ) AND USES IT IN THE MADISON RIVER DRAINAGE (BASIN 41F ) AND THE GALLATIN RIVER DRAINAGE (BASIN 41H ).



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

**Water Right Number:** 41F 211922-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** DISMISSED

**Late Claim:** B

**Owners:** JACK ROADARMEL  
1150 CARPENTER RD  
THREE FORKS, MT 59752  
  
RAELEEN ROADARMEL  
1150 CARPENTER RD  
THREE FORKS, MT 59752

**Priority Date:**

**Enforceable Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** REY CREEK

**Source Type:** SURFACE WATER

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

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

THIS APPROPRIATION OF WATER TAKES WATER FROM THE MADISON RIVER DRAINAGE (BASIN 41F ) AND USES IT IN THE MADISON RIVER DRAINAGE (BASIN 41F ) AND THE GALLATIN RIVER DRAINAGE (BASIN 41H ).

THIS APPROPRIATION OF WATER TAKES WATER FROM THE MADISON RIVER DRAINAGE (BASIN 41F ) AND USES IT IN THE MADISON RIVER DRAINAGE (BASIN 41F ) AND THE GALLATIN RIVER DRAINAGE (BASIN 41H ). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.