

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: State of Montana Board of Land Commissioners

CASE 41F-0173-R-2025
41F 214428-00

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 214428-00 received the following issue remark:

DITCH NAME IS BUFORD DITCH.

Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination.

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 the State of Montana Board of Land Commissioners to agree or disagree with the issue remark, or to file evidence resolving the issue remark.

The State of Montana Board of Land Commissioners filed a Statement of Agreement.

Issue

Is the ditch name issue remark resolved?

Findings of fact

1. The Preliminary Decree abstract for implied claim 41F 214428-00 did not identify a ditch name.
2. On May 8, 2025, the State of Montana Board of Land Commissioners filed a Statement of Agreement with the issue remark, agreeing that the ditch name for claim 41F 214428-00 should be Buford 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. 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. 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.

5. 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

Issue remark resolution

The captioned claim was subject to the court’s December 14, 2012 Order Addressing Reexamination. The court ordered DNRC, to amongst other items, standardize ditch names associated with standardized points of diversion, and to add an issue remark to the abstract providing notice to the claimant and other water users about the standardization. Claim 41F 214428-00 is an implied claim generated from parent claim 41F 8981-00 during Temporary Preliminary Decree proceedings. DNRC modified parent claim 41F 8981-00 during reexamination, adding the ditch name “Buford Ditch” and the issue remark noting the ditch name was standardized by DNRC. Because claim

41F 214428-00 is an implied claim generated by the court during previous court proceedings from parent claim 41F 8981-00, all elements of the claim were protected from standardization during DNRC's reexamination. DNRC could add issue remarks to claim 41F 214428-00 but could not make any modifications to the elements identified by the claim.

The State of Montana Board of Land Commissioners agreed with the ditch name identified by the issue remark on claim 41F 214428-00 and requested that the ditch name be added to the claim abstract.

Conclusions of law

Based upon DNRC claims examination, the standardization of the ditch name on parent claim 41F 8981-00, and the agreement of the State of Montana Board of Land Commissioners, the ditch name "Buford Ditch" should be added to implied claim 41F 214428-00.

Recommendations

Implied irrigation claim 41F 214428-00 should be modified as follows:

ADD DITCH NAME: **BUFORD DITCH**

The ditch name 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 Electronic Mail

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

Water Right Number: 41F 214428-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
FORESTRY AND TRUST LANDS DIVISION
PO BOX 201601
HELENA, MT 59620-1601

***Priority Date:** OCTOBER 22, 1885

***Type of Historical Right:** USE

***Purpose (Use):** IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 336.62 GPM

***Volume:** 135.30 AC-FT

THE VOLUME QUANTIFICATION ON THIS CLAIM IS THE RESULT OF A STIPULATION FILED BY THE PARTIES WITH THE WATER COURT ON 09/27/1991. THE COURT HAS MADE NO DETERMINATION AS TO THE NEED FOR A VOLUME QUANTIFICATION ON THIS CLAIM AS PROVIDED FOR IN 85-2-234 (6) (B) (III) M.C.A.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 20.00

***Source Name:** ODELL 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		NWNWNW	16	6S	1W	MADISON

Period of Diversion: MAY 1 TO SEPTEMBER 15

Diversion Means: HEADGATE

Ditch Name: BUFORD DITCH

***Period of Use:** MAY 1 TO SEPTEMBER 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	20.00		N2NWNW	16	6S	1W	MADISON

Total: 20.00

Remarks:

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41F 8981-00.