

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: T-L Irrigation Co.

OBJECTOR: T-L Irrigation Co.

CASE 41F-0028-R-2025

41F 132622-00

41F 132626-00

41F 132627-00

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

Stock claims 41F 132622-00, 41F 132626-00, and 41F 132627-00 received self-objections from claimant T-L Irrigation Co. T-L Irrigation Co. objected to the point of diversion and place of use identified by claim 41F 132622-00 and the point of diversion identified by claims 41F 132626-00 and 41F 132627-00.

The claims also received the following issue remarks:

41F 132622-00

POINT OF DIVERSION NO. 3 APPEARS TO BE INCORRECT. POINT OF DIVERSION NO. 3 APPEARS TO BE W2 SEC 31 TWP 8S RGE 1W MADISON COUNTY.

41F 132626-00

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NWNWSE SEC 28 TWP 8S RGE 1W MADISON COUNTY.

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.

41F 132627-00

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NWNWSE SEC 28 TWP 8S RGE 1W MADISON COUNTY.

Issue remarks often 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.

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

Issues

1. Are T-L Irrigation Co.’s objections to each claim resolved?
2. Are the issue remarks on each claim resolved?

Findings of fact

1. The historical point of diversion and place of use for livestock direct from source claim 41F 132622-00 parcel ID currently identified as No. 3 is the NESW of Section 31, Township 8 South, Range 1 West.

2. The historically accurate point of diversion for stock claims 41F 132626-00 and 41F 132627-00 is the NWNWSE of Section 28, 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. 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

Issues 1 and 2 - Objection and issue remark resolution

T-L Irrigation Co.'s objection asserts the point of diversion and place of use identified by the map attached to and in support of stock statement of claim 41F 132622-00 is historically accurate.

T-L Irrigation Co.'s objections to stock claims 41F 132626-00 and 41F 132627-00 confirm the historical accuracy of the point of diversion identified by the issue remark on each claim.

Stock claim 41F 132626-00 appeared in the Preliminary Decree with the following issue remark:

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.

The foregoing issue remark provided the opportunity for claimant and other water users to object to the claim. No one, including T-L Irrigation Co., objected to the ditch name issue remark on claim 41F 132626-00.

Conclusions of law

The modification to the point of diversion and place of use for stock claim 41F 132622-00 is a reduction within the parameters of the prima facie statement of claim and is supported by the map attached to and in support of the prima facie statement of claim. The record before the court justifies the modification proposed by T-L Irrigation Co.'s objection and resolves its objection to claim 41F 132622-00. The point of diversion issue remark on the claim is resolved.

The point of diversion issue remark, the information resulting in the issue remark, and T-L Irrigation Co.'s objection in agreement with the issue remark overcomes, by a preponderance of evidence, the prima facie proof afforded the point of diversion for claims 41F 132626-00 and 41F 132627-00. The point of diversion issue remark on each claim is resolved.

The Preliminary Decree abstract for stock claim 41F 132626-00 identifies the

historically accurate ditch name. The issue remark appearing on the claim served its notice purpose.

Recommendations

Stock claim 41F 132622-00 should be modified as follows to accurately reflect historical use.

POINT OF DIVERSION AND PLACE OF USE:

<u>ID</u>	<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
3	NESW	W2SW	31	8S	1W	MADISON

Stock claims 41F 132626-00 and 41F 132627-00 should be modified as follows to accurately reflect historical use.

POINT OF DIVERSION:

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NWNWSE	SESWNE	28	8S	1W	MADISON

The issue remarks should be removed from the claim abstracts.

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 132622-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: T-L IRRIGATION CO
PO BOX 1047
HASTINGS, NE 68902-1047

Priority Date: JUNE 1, 1896

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 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:** CHERRY CREEK

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		N2	31	8S	1W	MADISON
Period of Diversion:	MAY 1 TO JANUARY 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		SE	31	8S	1W	MADISON
Period of Diversion:	MAY 1 TO JANUARY 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		NESW	31	8S	1W	MADISON
Period of Diversion:	MAY 1 TO JANUARY 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		NE	32	8S	1W	MADISON
Period of Diversion:	MAY 1 TO JANUARY 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		S2NW	32	8S	1W	MADISON
Period of Diversion:	MAY 1 TO JANUARY 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
6		NENW	32	8S	1W	MADISON
Period of Diversion:	MAY 1 TO JANUARY 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

7	SESESE	29	8S	1W	MADISON
Period of Diversion:	MAY 1 TO JANUARY 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
8	SW	28	8S	1W	MADISON
Period of Diversion:	MAY 1 TO JANUARY 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
9	SE	28	8S	1W	MADISON
Period of Diversion:	MAY 1 TO JANUARY 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
10	NWNWNW	27	8S	1W	MADISON
Period of Diversion:	MAY 1 TO JANUARY 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
11	W2W2	22	8S	1W	MADISON
Period of Diversion:	MAY 1 TO JANUARY 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
12	W2	15	8S	1W	MADISON
Period of Diversion:	MAY 1 TO JANUARY 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
Period of Use:	MAY 1 TO JANUARY 31				

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2	31	8S	1W	MADISON
2			SE	31	8S	1W	MADISON
3			NESW	31	8S	1W	MADISON
4			NE	32	8S	1W	MADISON
5			S2NW	32	8S	1W	MADISON
6			NENW	32	8S	1W	MADISON
7			SESESE	29	8S	1W	MADISON
8			SW	28	8S	1W	MADISON
9			SE	28	8S	1W	MADISON
10			NWNWNW	27	8S	1W	MADISON
11			W2W2	22	8S	1W	MADISON
12			W2	15	8S	1W	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.

132622-00 132623-00 132624-00 132625-00 132637-00

IMPLIED CLAIM NO. 41F 214054-00 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 132626-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: T-L IRRIGATION CO
PO BOX 1047
HASTINGS, NE 68902-1047

Priority Date: NOVEMBER 1, 1909

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 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: CHERRY 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		NWNWSE	28	8S	1W	MADISON

Period of Diversion: SEPTEMBER 1 TO JANUARY 31

Diversion Means: DITCH
DITCH NAME KNOWN AS STOCKWATER DITCH.

Period of Use: SEPTEMBER 1 TO JANUARY 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			NW	27	8S	1W	MADISON
2			SE	22	8S	1W	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.

132626-00 132627-00 132636-00

IMPLIED CLAIM NO. 41F 214055-00 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 132627-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: T-L IRRIGATION CO
PO BOX 1047
HASTINGS, NE 68902-1047

Priority Date: NOVEMBER 1, 1909

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 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: CHERRY 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		NWNWSE	28	8S	1W	MADISON

Period of Diversion: SEPTEMBER 1 TO JANUARY 31

Diversion Means: DITCH
DITCH NAME KNOWN AS STOCKWATER DITCH.

Period of Use: SEPTEMBER 1 TO JANUARY 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			NW	27	8S	1W	MADISON
2			SW	22	8S	1W	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.

132626-00 132627-00 132636-00

IMPLIED CLAIM NO. 41F 214056-00 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.