

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: Crumley Ranches LLC; Lake Shore Lodge Inc.;
Levergne & Robicheaux Land LLC

CASE 41F-0106-R-2024
41F 101023-00
41F 114934-00

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

Crumley Ranches LLC owns irrigation claim 41F 101023-00. Lake Shore Lodge Inc. and Levergne & Robicheaux Land LLC own irrigation claim 41F 114934-00. Each claim received the following issue remark.

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 50 MINER'S INCHES DECREED IN CASE NO. 1236, MADISON COUNTY. 41F 101023-00, 41F 114934-00.

Each claim also received a version of the following issue remark.

XXXXXXXXX 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.

Issue remarks 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. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

Montana law requires the Water Court to resolve issue remarks. The decree exceeded issue remark was not resolved through the objection process. The court held a status conference January 23, 2025. Present was John Crumley on behalf of Crumley Ranches LLC. Lake Shore Lodge Inc. and Levergne & Robicheaux Land LLC failed to appear.

An order set a filing deadline for Lake Shore Lodge Inc. and Levergne & Robicheaux Land LLC to file evidence sufficient to show cause why their claim 41F 114934-00 should not be dismissed. Lake Shore Lodge Inc. and Levergne & Robicheaux Land LLC did not file evidence by the deadline. The order included language that the failure to comply with the order would be viewed as Lake Shore Lodge Inc.'s and Levergne & Robicheaux Land LLC's agreement that irrigation claim 41F 114934-00 should be dismissed.

Issue

Are the issue remarks resolved?

Findings of fact

1. The Preliminary Decree abstract for irrigation claim 41F 101023-00 reflects the historically accurate point of diversion and means of diversion.

2. Irrigation claim 41F 114934-00 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. 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. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. If a claimant fails to comply with an Order

issued by the Court in its review of issue remarks, the Court may terminate the claim to conform with information found in the claim file. Section 85-2-248(9)(d), MCA.

Analysis

Issue remark resolution

Based upon information in the claim files, each captioned claim claimed the entirety of the 1.25 CFS decreed to J.A. McAllister for North Meadow Creek with a May 1, 1903 priority date by Case No. 1236, Madison County. Lake Shore Lodge Inc.'s and Levergne & Robicheaux Land LLC's failure to provide any evidence to address or resolve the decree exceeded issue remark on the claims leaves the information before the court and the decree exceeded issue remark as evidence that one of the captioned irrigation claims should be dismissed from the adjudication.

Claim 41F 101023-00 also received an issue remark providing notice to water users that the means of diversion and point of diversion were modified by DNRC during reexamination. Water users were given the opportunity to review the claim and file an objection. The deadline to file objections passed. No water users filed objections against the claim.

Conclusions of law

Based upon the decree exceeded issue remark on the claims, the DNRC claim examination worksheets in the claim files, and Lake Shore Lodge Inc.'s and Levergne & Robicheaux Land LLC's failure to comply with orders issued by the court, irrigation claim 41F 114934-00 should be dismissed. The dismissal of irrigation claim 41F 114934-00 resolves the decree exceeded issue remark on irrigation claim 41F 101023-00.

The point of diversion and means of diversion issue remark on irrigation claim 41F 101023-00 served its notice purpose.

Recommendations

No modifications should be made to the elements of irrigation claim 41F 101023-00. The issue remarks should be removed from the abstract of irrigation claim 41F

101023-00.

Irrigation claim 41F 114934-00 should be dismissed.

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:

Crumley Ranches LLC
PO Box 96
McAllister, MT 59740-0096
dcrumley51@gmail.com

Lake Shore Lodge Inc.
PO Box 339
McAllister, MT 59740-0339

Levergne & Robicheaux Land LLC
602 Pecan Grove
Berwick, LA 70342

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

Water Right Number: 41F 101023-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CRUMLEY RANCHES LLC
PO BOX 96
MCALLISTER, MT 59740-0096

Priority Date: MAY 1, 1903

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 1.25 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 50.00

Source Name: 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		NENWNW	34	4S	1W	MADISON

Period of Diversion: MAY 20 TO SEPTEMBER 10

Diversion Means: PUMP

PIPELINE IS USED TO CONVEY WATER.

Period of Use: MAY 20 TO SEPTEMBER 10

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	35.00		NENW	34	4S	1W	MADISON
2	15.00		SENW	34	4S	1W	MADISON
3			SESE	27	4S	1W	MADISON
4			SWSE	27	4S	1W	MADISON

Total: 50.00

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

Water Right Number: **41F 114934-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: LAKE SHORE LODGE INC
 PO BOX 339
 MCALLISTER, MT 59740-0339

 LEVERGNE & ROBICHEAUX LAND LLC
 602 PECAN GROVE
 BERWICK, LA 70342

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: NORTH MEADOW CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.