

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: Alton Living Trust

OBJECTOR: Alton Living Trust

NOTICE OF INTENT TO APPEAR: United States of America
(Bureau of Reclamation)

CASE 41F-0013-R-2024

41F 18684-00

41F 18690-00

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

The captioned claims are multiple uses. Multiple uses of a water right occur when one water right is used for more than one purpose. The water right identified by the captioned claims is used for stock (41F 18684-00) and irrigation (41F 18690-00) purposes. The captioned claims received an objection from claimant Alton Living Trust to the flow rate. The United States of America (Bureau of Reclamation) filed a notice of intent to appear for each claim.

Each claim also received the following issue remark:

DITCH NAME AND POINT OF DIVERSION 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 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, objections, and notices of intent to appear.

Issues

1. Is Alton Living Trust's objection to each claim resolved?
2. Is the notice of intent to appear resolved for each claim?
3. Is the notice issue remark on each claim resolved?

Findings of fact

1. The historically accurate flow rate for irrigation claim 41F 18690-00 is 18.75 CFS.

2. No modifications are necessary to the flow rate identified by the Preliminary Decree abstract for stock claim 41F 18684-00.

3. The Preliminary Decree abstracts for irrigation claim 41F 18690-00 and stock claim 41F 18684-00 identify the historically accurate point of diversion and ditch name.

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.

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 – resolution of flow rate objections and resolution of notices of intent to appear

Alton Living Trust withdrew its flow rate objection to stock claim 41F 18684-00 stating no changes to the claim are necessary.

Alton Living Trust asserts the 25.00 CFS flow rate identified by statement of claim 41F 18690-00 is historically accurate. However, Alton Living Trust acknowledges that irrigation claim 41F 18690-00 and irrigation claim 41F 136416-00 (Case 41F-0009-R-2024), both identify the same James D. Shewmaker filed notice of appropriation for 25.00 CFS of the Madison River as their historical basis. To avoid an overfiling of the James D. Shewmaker notice of appropriation, Alton Living Trust requests that its prima

facie 25.00 CFS flow rate be reduced to 18.75 CFS to avoid an overfiled notice of appropriation with James A. Daems irrigation claim 41F 136416-00 (Case 41F-0009-R-2024).

Alton Living Trust's Motion to Reinstate Prima Facie Claimed Flow Rate and to Reduce Prima Facie Claimed Flow Rate to Resolve Exceeded Notice of Appropriation, brief in support, and its attachments may be viewed on the court's case management system, FullCourt Enterprise, at document sequence 5.00.

Conclusions of law

The 18.75 CFS flow rate proposed by Alton Living Trust for irrigation claim 41F 18690-00 is supported by the prima facie statement of claim and its attachments, thereby justifying the modification proposed by Alton Living Trust, and resolving Alton Living Trust's objection to the claim. Alton Living Trust's Motion noted the United States of America (Bureau of Reclamation) does not oppose the Motion. The United States of America (Bureau of Reclamation's) notice of intent to appear for irrigation claim 41F 18690-00 is resolved.

Alton Living Trust withdrew its objection to stock claim 41F 18684-00 stating no modifications should be made to the claim. The United States of America (Bureau of Reclamation's) notice of intent to appear for stock claim 41F 18684-00 is resolved due to Alton Living Trust's withdrawal of objection to stock claim 41F 18684-00 and lack of any modifications to the claim.

Issue 3 – issue remark resolution

Irrigation claim 41F 18690-00 and stock claim 41F 18684-00 appeared in the Preliminary Decree with the following issue remark:

DITCH NAME AND POINT OF DIVERSION 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 foregoing issue remark provided the opportunity for claimant and other water users to object to the claim. No one, including Alton Living Trust, objected to the

elements identified by the issue remark on the claims.

Conclusions of law

The Preliminary Decree abstracts for irrigation claim 41F 18690-00 and stock claim 41F 18684-00 identify the historically accurate ditch name and point of diversion. The issue remark appearing on the claims served its notice purpose.

Recommendations

Irrigation claim 41F 18690-00 should be modified as follows to accurately reflect historical use.

<u>FLOW RATE:</u>	14.40 CFS	18.75 CFS
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The notice issue remark should be removed from the abstract of each captioned claim.

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.

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

Water Right Number: 41F 18684-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ALTON LIVING TRUST
PO BOX 4029
WESTLAKE VILLAGE, CA 91359

Priority Date: JUNE 18, 1946

Type of Historical Right: FILED

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: MADISON RIVER

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		SWNESW	10	8S	1W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: SHEWMAKER DITCH

Period of Use: JANUARY 1 TO DECEMBER 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				6	7S	1W	MADISON
2			S2	31	6S	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.

18684-00

18690-00

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

Water Right Number: 41F 18690-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ALTON LIVING TRUST
PO BOX 4029
WESTLAKE VILLAGE, CA 91359

Priority Date: JUNE 18, 1946

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 18.75 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: 380.00

Source Name: MADISON RIVER

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		SWNESW	10	8S	1W	MADISON

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: SHEWMAKER DITCH

Period of Use: APRIL 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	6.00		NESWSW	31	6S	1W	MADISON
2	70.00		E2SW	31	6S	1W	MADISON
3	30.00		W2W2SE	31	6S	1W	MADISON
4	140.00		SE	6	7S	1W	MADISON
5	100.00		E2W2	6	7S	1W	MADISON
6	34.00		W2W2NE	6	7S	1W	MADISON

Total: 380.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

18690-00

18692-00

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.

18684-00

18690-00