

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
(406) 586-4364  
1-800-624-3270  
watercourt@mt.gov

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.

NOTICE OF INTENT TO APPEAR: Alton Living Trust

**ON MOTION OF THE MONTANA WATER COURT**

**CASE 41F-0025-R-2024**

41F 132616-00

41F 132632-00

41F 132638-00

**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 Water Court issued two decrees for Basin 41F - the Temporary Preliminary Decree in 1984 and the Preliminary Decree in 2023.

Irrigation claims 41F 132632-00 and 41F 132638-00 received late objections from claimant T-L Irrigation Co. Alton Living Trust filed a notice of intent to appear for irrigation claim 41F 132638-00.

The captioned claims appeared in the Preliminary Decree with issue remarks. 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. Issue remarks may also provide notice to water users concerning a claim.

### **Stock Claim 41F 132616-00**

MEANS OF DIVERSION 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.

### **Irrigation Claim 41F 132632-00**

A LATE OBJECTION HAS BEEN FILED TO THE PLACE OF USE AND MAXIMUM ACRES OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

### **Irrigation Claim 41F 132638-00**

A LATE OBJECTION HAS BEEN FILED TO THE PLACE OF USE, PRIORITY DATE, AND MAXIMUM ACRES OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

THE PRIORITY DATE AND THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT APPEAR TO BE A MULTIPLE USE OF THE SAME RIGHT. IT APPEARS THE PRIORITY DATE IS 12/19/1880 AND THE TYPE OF HISTORICAL RIGHT IS DECREED.

Montana law requires the Water Court to resolve objections, notices of intent to appear, and issue remarks. While reviewing the issue remarks on claim 41F 132638-00,

it came to the Master's attention that multiple uses of the claimed water right exist. Multiple uses of a water right occur when one water right is used for more than one purpose. In this case the multiple uses of the water right are identified by stock claim 41F 132616-00 and irrigation claim 41F 132638-00. Stock claim 41F 132616-00 did not receive the issue remarks concerning priority date, type of historical right, and multiple use although stock claim 41F 132616-00 and irrigation claim 41F 132638-00 are for the same historical water right. Pursuant to Rule 8, W.R.Adj.R., the court may call in a claim or certain elements of a claim to determine whether the claim or certain elements of the claim accurately reflect pre-July 1, 1973 beneficial use. As directed by Rule 8, W.R.Adj.R., when a claim is called in on motion of the court, the procedures outlined in Section 85-2-248, MCA shall be followed. Based upon the foregoing, the priority date for multiple use stock claim 41F 132616-00 is called in on motion of the court.

### **Issues**

1. Are the priority date and multiple use issue remarks, T-L Irrigation Co.'s objection to priority date, and Alton Living Trust's notice of intent to appear resolved for irrigation claim 41F 132638-00?
2. Is the means of diversion issue remark for stock claim 41F 132616-00 and the court's on motion concern for stock claim 41F 132616-00 resolved?
3. Are the late objection issue remarks and T-L Irrigation Co.'s objection to the maximum acres irrigated and place of use for irrigation claims 41F 132632-00 and 41F 132638-00 resolved?

### **Findings of fact**

1. The priority date for multiple use stock claim 41F 132616-00 and irrigation claim 41F 132638-00 is September 21, 1880.
2. The Preliminary Decree abstract for stock claim 41F 132616-00 identifies the historically accurate means of diversion, "headgate."
3. Irrigation claims 41F 132632-00 and 41F 132638-00 historically irrigated 447.00 acres.

## **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, the burden of proof must be met. If evidence does not meet the burden of proof, the element shall not be expanded or enlarged. Rule 17(b), W.R.Adj.R.

5. According to Rule 8, W.R.Adj.R., the Court may call in a claim/elements of a claim to determine whether its elements accurately reflect pre-July 1, 1973 beneficial use. As directed by Rule 8, W.R.Adj.R., when a claim is called in on motion of the Court, the procedures outlined in § 85-2-248, MCA shall be followed.

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. Judicial notice of facts may be taken from a source “whose accuracy cannot be

reasonably questioned.” Rule 201, M.R.Ev.

## Analysis

### **Issues 1 and 2 – claims 41F 132616-00 and 41F 132638-00 priority date and multiple use resolution; issue remark, objection, notice of intent to appear, and on motion resolution**

A predecessor in interest to T-L Irrigation Co. stipulated to the same modified priority date for three claims all claiming the first water right on Warm Spring Creek aka Blaine Spring Creek decreed to Valley Garden Ranch Co. in Case No. 5526, *Win-Del Ranches, et al. v. Lehman Ranch Company*, Fifth Judicial District, Madison County. (See claim files 41F 132616-00 and 41F 132638-00.) The three claims involved in the stipulation all claimed the same water right decreed with a priority date of “Fall 1880” by the district court. During claims examination for issuance of the Temporary Preliminary Decree, the DNRC modified the claimed priority date of Fall 1880 to December 31, 1880, and December 21, 1880, for claims 41F 132616-00 and 41F 132638-00, respectively. The parties stipulated that all three water rights should instead identify a priority date of September 21, 1880. The Water Court adopted this stipulated priority date for one of the three claims, 41F 31227-00 during Temporary Preliminary Decree proceedings. (See claim file 41F 31227-00 May 23, 1991 Master’s Report, Case 41F-61 and Jul. 3, 1991 Order Correcting and Adopting Master’s Report.) The Water Court added a notice issue remark concerning the stipulated priority date to the other two similarly situated irrigation claims, including a claim in this case, 41F 132638-00.

The priority date for irrigation claim 41F 132638-00 should be modified to September 21, 1880, to implement the stipulated agreement of T-L Irrigation Co.’s predecessor in interest and to reflect the stipulated modified priority date already adopted by the court for one of the three claims included in the stipulation. Furthermore, the priority date for multiple uses, stock claim 41F 132616-00 and irrigation claim 41F 132638-00, should match. The priority date element for multiple use irrigation claim 41F 132638-00 appeared on the objection list for Basin 41F. Because multiple use stock

claim 41F 132616-00 is for the same historical water right, water users in Basin 41F were given notice that the priority date for multiple use stock claim 41F 132616-00 may be modified.

Judicial notice is taken of the source index for the Basin 41F Preliminary Decree index located at:

[https://dnrc.mt.gov/\\_docs/water/adjudication/Decrees-2023/DECREE-41F-SRCINDX-23\\_0726.pdf](https://dnrc.mt.gov/_docs/water/adjudication/Decrees-2023/DECREE-41F-SRCINDX-23_0726.pdf)

There are no other water users other than those that agreed to the stipulated priority date that will be affected by the modified priority date.

The means of diversion issue remark on stock claim 41F 132616-00 instructed claimant and other water users that if no objections were filed to the modification, the element would remain as it appears on the Preliminary Decree abstract. No one objected to the means of diversion for the claim.

### **Conclusions of law**

The court previously adjudicated the priority date stipulated to by T-L Irrigation Co.'s predecessor in interest finding the priority date to be historically accurate. The priority date for stock claim 41F 132616-00 and irrigation claim 41F 132638-00 should reflect the priority date stipulated to by T-L Irrigation Co.'s predecessor in interest. The priority date modification resolves the court's on motion concern for stock claim 41F 132616-00; the priority date portion of the late objection issue remark and the priority date, type of historical right, and multiple use issue remark appearing on irrigation claim 41F 132638-00; T-L Irrigation Co.'s late objection to the priority date for irrigation claim 41F 132638-00; and satisfies the condition noted by Alton Living Trust's conditional withdrawal of notice of intent to appear for irrigation claim 41F 132638-00.

The means of diversion issue remark on stock claim 41F 132616-00 served its notice purpose.

### **Issue 3 – claims 41F 132632-00 and 41F 132638-00 maximum acres irrigated and place of use; issue remark and objection resolution**

T-L Irrigation Co. filed a late objection to the maximum acres irrigated and place

of use for irrigation claims 41F 132632-00 and 41F 132638-00. T-L Irrigation Co. supports and confirms the historical accuracy of its proposed increase to a 447.00 acre place of use with its June 30, 1992 late objection (Status Report Ex. B) and a 1993 Public Notice for a change application (Status Report Ex. C). Documents in support of the late objection are:

- the LeRoy Thom (then President of T-L Irrigation Co.) Affidavit, notarized by then Regional Manager for the Bozeman DNRC, Scott Compton, confirming 447.00 acres were historically irrigated, and
- aerial photography depicting the historical irrigation of the 447.00 acre place of use prepared by Bozeman DNRC Regional Manager Scott Compton.

The Public Notice for a change application for claims 41F 132632-00 and 41F 132638-00 identifies the historical irrigation of the 447.00 acre place of use as 160.00 acres in Section 31, 243.00 acres in Section 30, and 44.00 acres in Section 19, Township 7 South, Range 1 West, Madison County. (Status Report Ex. C) This is the same number of acres irrigated and place of use proposed by T-L Irrigation during these case proceedings.

T-L Irrigation Co.'s Status Report with explanation and evidence in support of the increase in maximum acres irrigated and place of use may be viewed on the court's case management system, FullCourt Enterprise, at document sequence 4.00.

### **Conclusions of law**

T-L Irrigation Co.'s proposed modifications to the maximum acres irrigated and place of use for irrigation claims 41F 132632-00 and 41F 132638-00 are historically accurate and overcome by a preponderance of evidence the prima facie proof afforded each statement of claim, justify the modifications to each claim, resolve the maximum acres irrigated and place of use portion of the late objection issue remark on each claim, and resolve T-L Irrigation Co.'s late objection to the maximum acres irrigated and place of use for irrigation claims 41F 132632-00 and 41F 132638-00.

## **Recommendations**

The priority date for multiple use stock claim 41F 132616-00 and irrigation claim 41F 132638-00 should be modified to **September 21, 1880.**

The maximum acres irrigated and place of use for irrigation claims 41F 132632-00 and 41F 132638-00 should be modified **as shown on the abstracts included with this report.**

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**

Ryan K. Mattick  
Michael J. L. Cusick  
Cusick, Farve, Mattick & Michael, P.C.  
PO Box 1288  
Bozeman, MT 59771-1288  
(406) 587-5511  
(406) 587-9079 (Fax)  
office@cmrlawmt.com

\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Datavol)\Share\WC-BASIN FOLDERS\41F PD\Cases\25R\MR--41F-25R sjs.docx 5/2/25

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

**Water Right Number:** 41F 132616-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** SEPTEMBER 21, 1880

**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:** BLAINE SPRING 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		SENENW	24	7S	2W	MADISON

**Period of Diversion:** APRIL 1 TO JANUARY 31

**Diversion Means:** HEADGATE

**Period of Use:** APRIL 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			SWSW	19	7S	1W	MADISON
2			N2	30	7S	1W	MADISON
3			SE	30	7S	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.

132616-00

132638-00

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

**Water Right Number:** 41F 132632-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** JUNE 19, 1895

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 6.25 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:** 447.00

**Source Name:** BLAINE SPRING 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		SENENW	24	7S	2W	MADISON

**Period of Diversion:** APRIL 15 TO NOVEMBER 15

**Diversion Means:** HEADGATE

**Period of Use:** APRIL 15 TO NOVEMBER 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	44.00		S2S2	19	7S	1W	MADISON
2	157.00		N2	30	7S	1W	MADISON
3	86.00		S2	30	7S	1W	MADISON
4	10.00		N2N2NE	31	7S	1W	MADISON
5	150.00		N2	31	7S	1W	MADISON
<b>Total:</b>	<b>447.00</b>						

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME PLACE OF USE.

132632-00 132635-00

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME PLACE OF USE.

132629-00 132632-00

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME PLACE OF USE.

18903-00                      132632-00

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME PLACE OF USE.

132630-00                      132632-00

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME PLACE OF USE.

132628-00                      132632-00

AUTHORIZATION TO CHANGE (SEVER/SELL) THE PLACED OF USE COMPLETED 07/16/1993 . FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE.

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

**Water Right Number:** 41F 132638-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** SEPTEMBER 21, 1880

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 7.50 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:** 447.00

**Source Name:** BLAINE SPRING 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		SENENW	24	7S	2W	MADISON

**Period of Diversion:** APRIL 15 TO NOVEMBER 15

**Diversion Means:** HEADGATE

**Period of Use:** APRIL 15 TO NOVEMBER 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	44.00		S2S2	19	7S	1W	MADISON
2	157.00		N2	30	7S	1W	MADISON
3	86.00		S2	30	7S	1W	MADISON
4	10.00		N2N2NE	31	7S	1W	MADISON
5	150.00		N2	31	7S	1W	MADISON
<b>Total:</b>	<b>447.00</b>						

**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.

132616-00      132638-00

AUTHORIZATION TO CHANGE THE PLACE OF USE COMPLETED 07/16/1993. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE. SEE 41F 132632-00 .