

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: Catherine R. Gustin; Gary V. Gustin

OBJECTOR: United States of America (Bureau of Land
Management)

NOTICE OF INTENT TO APPEAR: Alton Living Trust

CASE 41F-0054-R-2024
41F 132650-00

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 United States of America (Bureau of Land Management) filed an objection to all elements and abandonment of the captioned claim stating, “The point of diversion and place of use for this stock claim are located entirely on federal land administered by the Bureau of Land Management (BLM). Claimants do not appear to have any authorization for grazing stock on the federal land. Withdrawal of this claim will resolve BLM’s objection.” Alton Living Trust filed a notice of intent to appear for the captioned claim.

The Water Master held a status conference to discuss the objection to and notice of intent to appear for the captioned claim. Claimants, Catherine R. Gustin and Gary V. Gustin (“Gustins”), failed to appear. The United States of America (Bureau of Land Management) requested time to file a suggested resolution of its objections and evidence in support.

On February 28, 2025, the United States of America (Bureau of Land Management) filed its Notice of Filing Evidence to Support Objection and Motion for Order to Show Cause. Pursuant to Rule 22, W.R.Adj.R., a deadline was set for Gustins to Show Cause why the claim should not be dismissed. Gustins did not respond by the deadline.

Issue

Should stock claim 41F 132650-00 be dismissed?

Finding of fact

Stock claim 41F 132650-00 should be dismissed.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right or an amended claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and 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. 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. When a claimant fails to comply with an Order issued by the Water Court, including an order issued by a Water Master appointed by the Court, the Court upon its own initiative or upon motion, can among other actions: 1) modify the elements of the claim to conform with the information in the claim file, information obtained by the Court, or information included in an objection, or 2) terminate the claim. Rule 22, W.R.Adj.R.

Analysis

Requested sanction - dismissal of claim 41F 132650-00, objection resolution and notice of intent to appear resolution

The United States of America (Bureau of Land Management) filed the Declaration of Melissa Norris in support of its request to dismiss claim 41F 132650-00. Ms. Norris declares that she “personally reviewed claim 41F 132650-00 and documentation relating to the claim” and that she “reviewed official BLM files related to grazing, realty, and land status.” (*See* Feb. 28, 2025 Notice of Filing Evidence to Support Objection and Motion for Order to Show Cause, Declaration of Melissa Norris ¶ 3.)

Based upon Ms. Norris’s review, in 2002 the United States of America (Bureau of Land Management) obtained the land where the place of use and point of diversion for livestock direct from source claim 41F 132650-00 are located, no grazing permit exists for claimants to use water on this federal land, and the lands are unavailable for grazing

livestock. (See Feb. 28, 2025 Notice of Filing Evidence to Support Objection and Motion for Order to Show Cause, Declaration of Melissa Norris ¶¶ 4, 7-8.)

Notice of intent to appear party Alton Living Trust did not object to the Motion for Order to Show Cause, signaling its agreement with the requested sanction.

Conclusions of law

Based upon the United States of America (Bureau of Land Management's) evidence, and the Gustins' repeated failure to comply with orders issued by the Water Master, the requested sanction, dismissal of claim 41F 132650-00, appears just. The dismissal of claim 41F 132650-00 resolves the United States of America (Bureau of Land Management's) objection and Alton Living Trust's notice of intent to appear.

Recommendations

Stock claim 41F 132650-00 should be dismissed.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm dismissal of the claim in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail

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Gary V Gustin
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Service via Electronic Mail

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Note: Service List Updated 5/27/2025

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

Water Right Number: 41F 132650-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: CATHERINE R GUSTIN
3819 SEMINARY AVE
RICHMOND, VA 23227-4111

GARY V GUSTIN
3819 SEMINARY AVE
RICHMOND, VA 23227-4111

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: SPRING, UNNAMED TRIBUTARY OF MORAN CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.