

Montana Water Court
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FILED
05/28/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41F-0086-R-2025
Reynolds, Brooke
3.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MADISON RIVER BASIN (41F)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Fenia F. Hiaasen Revocable Trust; Jan Murphy;
Harry D. Page Marital Trust; Edmund Schutts;
Logan Schutts

CASE 41F-0086-R-2025
41F 136412-00

OBJECTOR: Harry D. Marital Trust

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

The Montana Water Court included claim 41F 136412-00 in the Preliminary Decree for the Madison River (Basin 41F) issued on July 26, 2023. The claim received a self-objection from the Harry D. Page Marital Trust, but no issue remarks, counterobjections, or notices of intent to appear. The Water Court consolidated the claim into Water Court Case 41F-0086-R-2025 to resolve the objection. (Doc.¹ 1.00).

FINDINGS OF FACT

1. Fenia Hiaasen Revocable Trust, Jan Murphy, Harry D. Page Marital Trust, Edmund Schutts, and Logan Schutts own claim 41F 136412-00.
2. The claim is an irrigation right for 5.00 cfs from North Meadow Creek with a priority date of May 1, 1903.
3. The Preliminary Decree Abstract identifies the place of use as:

<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	124.40		SWSWNW	2	4S	2W	MADISON
2	4.00		S2	2	4S	2W	MADISON
Total:		128.40					

4. Harry D. Page Marital Trust filed an objection to the place of use, stating:

The acres listed for place of use No. 1 and No. 2 appear to be reversed and should be corrected. The Preliminary Decree list 124.40 acres in the SWSWNW, Section 2, T4S, R2W and 4.00 acres in the S2, Section 2, T4S, R2W. However, this should be 124.40 acres in the S2, Section 2, T4S, R2W and 4.00 acres in the SWSWNW, Section 2, T4S, R2W (see water right 41F 136411-00).

5. In the order consolidating claim 41F 136412-00, the Court set a deadline for the remaining co-claimants to file statements with the Court indicating whether they agree or disagree with Harry D. Page Marital Trust's objection to the place of use. (Doc. 1.00).

6. The Court stated in the order that "If no statements are filed by the deadline, the Court will assume the remaining co-claimants agree with the Trust's objection." (Doc. 1.00).

7. On May 2, 2025, Jan Murphy filed a response indicating that she agrees with Harry D. Page Marital Trust's objection and requests the Court modify the place of use as requested by the Trust. (Doc. 2.00). Ms. Murphy also provided a map showing the actual place of

¹ "Doc." Numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

use on the ground. The map reaffirms that Place of Use ID No. 1 and No. 2 are reversed on the Preliminary Decree Abstract and should be modified as follows:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u> <u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	124.40		S2 SWSWNW	2	4S	2W	MADISON
2	4.00		SWSWNW S2	2	4S	2W	MADISON
Total:	128.40						

8. No other co-claimant responded by the deadline. The Court assumes they agree with Harry D. Page Marital Trust's objection.

CONCLUSIONS OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298.

2. A properly filed claim of an existing right or an amended claim of an existing 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 the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeyer et al. v. Burkhartsmeyer et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master's Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as "a relatively modest standard that the statutory criteria are 'more probable than not' to have been met." *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. 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.

5. The evidence before the Court shows that Place of Use ID No. 1 and No. 2 are reversed on the Preliminary Decree Abstract. The Court should modify the claim as follows to reflect the actual historical 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	124.40		S2 SWSWNW	2	4S	2W	MADISON
2	4.00		SWSWNW S2	2	4S	2W	MADISON
Total:	128.40						

RECOMMENDATION

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court modify the place of use of claim 41F 136412-00 as outlined above.

A Post Decree Abstract of Water Right Claim is served with this Master's Report to confirm the recommendation has been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail

Jeremy A. Michael
Cusick, Farve, Mattick & Refling P.C.
office@cmrlawmt.com
(att'y for Harry D. Marital Trust)

William C. Fanning
Fanning Law PLLC
william@fanninglawpllc.com
becki@fanninglawpllc.com
(att'y for Edmund Schutts and Logan Schutts)

Breeann Johnson
Kirsia Shelkey
Western Roots Law PLLC
shelkey@westrootslaw.com
johnson@westrootslaw.com
(attys for Jan Murphy)

Service via USPS Mail

Jan Murphy
PO Box 591
Ennis, MT 59729
(**Last Order**)

Fenia F. Hiaasen Revocable Trust
~~PO Box 352~~
~~McAllister, MT 59740~~
437 N Willson Ave
Bozeman, MT 59715

Service List Updated: 5/22/2025

\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Datavol)\Share\WC-BASIN FOLDERS\41F PD\Cases\86R\41F-86R MR 5.22.25 rc.docx

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

Water Right Number: 41F 136412-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JAN MURPHY
PO BOX 591
ENNIS, MT 59729-0591

EDMUND SCHUTTS
4410 COUGAR RD
LIPAN, TX 76462

LOGAN SCHUTTS
4410 COUGAR RD
LIPAN, TX 76462

HIAASEN, FENIA F REVOCABLE TRUST
437 N WILLSON AVE
BOZEMAN, MT 59715

PAGE, HARRY D MARITAL TRUST
% SEAN B ABSHER, TRUSTEE
172 ARDITH DRIVE
ORINDA, CA 94563-4234

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT
MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE OWNERS.

Priority Date: MAY 1, 1903

Type of Historical Right: DECREEED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.00 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: 128.40

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		NESWNE	3	4S	2W	MADISON

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: KIRBY DITCH

Period of Use: MAY 1 TO OCTOBER 1

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	124.40		S2	2	4S	2W	MADISON
2	4.00		SWSWNW	2	4S	2W	MADISON
Total:	128.40						

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.

136411-00 136412-00 148621-00