

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: Segal Family Trust; Jessica L. Kindzerski;
Brandon Keim

CASE 41F-0186-R-2025

41F 107151-00

41F 107152-00

41F 30161009

Split Claim:

41F 30170920

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, conclusion 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

Procedural history

While working on resolving issues concerning claims for the Basin 41F Preliminary Decree, it came to this Master's attention that a split claim was created from parent claim 41F 107151-00 (owned by Segal Family Trust). Split claim number 41F 30161009 (owned by Jessica L. Kindzerski and Brandon Keim) was not included in the Basin 41F Preliminary Decree.

The split process implemented for these claims appeared to be incomplete and the paperwork for the split was not included in the claim files. The court requested information from the claimants for each claim to fully complete the split request. On April 10, 2025, counsel for Segal Family Trust, Kirs A. Shelkey, filed a proposed resolution. Ms. Shelkey also alerted the court that irrigation claim 41F 107152-00, a claim involved in the same land sale, was not split. The court reconsolidated claim 41F 107152-00 into this case to complete the split request agreed to by claimants. The request to split was supported by a May 23, 2023 Joint Tenancy Warranty Deed between Grantor Segal Family Trust and Grantees Brandon Keim and Jessica Kindzerski and a map. The deed notes that Segal Family Trust sold 63.35 acres identified as Parcel A along with seventy percent of its interest in stock claim 41F 107151-00 and irrigation claim 41F 107152-00 to Brandon Keim and Jessica Kindzerski. Segal Family Trust retained 12.83 acres identified as Parcel B along with thirty percent of stock claim 41F 107151-00 and irrigation claim 41F 107152-00. Segal Family Trust's proposed resolution and exhibits may be viewed on the court's case management system, FullCourt Enterprise, at document sequence 5.00.

Stock claim 41F 107151-00 received the following issue remark:

DITCH NAME AND MEANS 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 result from Department of Natural Resources and Conservation (“DNRC”) claims examination. Montana law requires the Water Court to resolve issue remarks. Water users, including claimants, 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. No further information was required to resolve this notice issue remark on stock claim 41F 107151-00.

Finding of fact

Based upon the foregoing, and the agreed upon request to split claims 41F 107151-00 and 41F 107152-00, the following modifications should be made to the claims.

Parent Stock Claim 41F 107151-00 (Owned by Segal Family Trust)

VOLUME:

ADD INFORMATION REMARK:

THIS CLAIM SERVES 20 CATTLE AND 5 HORSES.

PLACE OF USE:

<u>PARCEL 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>
			W2NW	20	7S	1W	MADISON

ADD INFORMATION REMARK:

THE PLACE OF USE IS RECORDED AS PARCEL B OF CERTIFICATE OF SURVEY NO. 7/2644BA.

ADD GENERAL INFORMATION REMARK:

SPLIT CLAIM NO. 41F 30161009 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

Split Stock Claim 41F 30161009 (Owned by Jessica Kindzerski and Brandon Keim)

VOLUME:

ADD INFORMATION REMARK:

THIS CLAIM SERVES 60 CATTLE AND 15 HORSES.

<u>PERIOD OF USE:</u>	<u>BLANK</u>	<u>JANUARY 1 TO DECEMBER 31</u>

PLACE OF USE:

<u>PARCEL 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>
			W2NW	20	7S	1W	MADISON

ADD INFORMATION REMARK:

THE PLACE OF USE IS RECORDED AS PARCEL A OF CERTIFICATE OF SURVEY NO. 7/2644BA.

ADD GENERAL INFORMATION REMARK:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41F 107151-00.

Parent Irrigation Claim 41F 107152-00 (Owned by Segal Family Trust)

FLOW RATE: 2.88 CFS 385.99 GPM (0.86 CFS)

MAXIMUM ACRES: 80.00 12.83

PLACE OF USE:

<u>PARCEL 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>
	12.83 — 80.00		W2NW	20	7S	1W	MADISON
TOTAL:	12.83 80.00						

ADD INFORMATION REMARK:

THE PLACE OF USE IS RECORDED AS PARCEL B OF CERTIFICATE OF SURVEY NO. 7/2644BA.

ADD GENERAL INFORMATION REMARK:

SPLIT CLAIM NO. 41F 30170920 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

Split Irrigation Claim 41F 30170920 (Owned by Jessica Kindzerski and Brandon Keim)

FLOW RATE: 2.02 CFS

MAXIMUM ACRES: 63.35

PLACE OF USE:

<u>PARCEL 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>
	63.35 — 80.00		W2NW	20	7S	1W	MADISON
TOTAL:	63.35 80.00						

ADD INFORMATION REMARK:

THE PLACE OF USE IS RECORDED AS PARCEL A OF CERTIFICATE OF SURVEY NO. 7/2644BA.

ADD GENERAL INFORMATION REMARK:

**THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON
INFORMATION IN CLAIM NO. 41F 107152-00.**

Principles of law

1. 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.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, 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. Livestock direct from source claims are normally unquantified. Livestock direct from source claims normally receive information remarks under flow rate and volume. The information remark under volume limits a livestock direct from source claim to reasonable carrying capacity of the place of use at a rate of 30 GPD/animal unit. When the number of animal units served is at issue, without evidence of carrying capacity of the land, the number of animal units identified by the prima facie statement of claim is the only proof available to establish the number of animal units served.

Burkhartsmeier v. Burkharmsmeier, Case 40G-2 at p. 17-18, (MT Water Court Memorandum Opinion Mar. 11, 1997); *Cf. Stone Creek Ranches Inc. v. U.S.*, 2016 Mont. Water LEXIS 13 at ** 9-12 (Oct. 24, 2016) adopted by *Stone Creek Ranches Inc. v. U.S.*, 2016 Mont. Water LEXIS 6 (Nov. 9, 2016).

Conclusions of law

The modifications to the parent (original) claims in this proceeding do not constitute challenges to the prima facie status of the claims. The accurate representation of the split of claims 41F 107151-00 and 41F 107152-00 in this proceeding, the evidence provided in support of the split, and the agreement of all claimants to the split provided sufficient information to complete the requested split of the claims.

The notice issue remark on stock claim 41F 107151-00 served its purpose.

Recommendations

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin.

Abstracts of Water Right Claim accompany this Report to confirm that the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Jessica L. Kindzerski
1335 Stewart Loop
Bozeman MT 59718

Service via Electronic Mail

Brandon Keim
bkeim5734@gmail.com

Breeann M. Johnson
Kirsia Shelkey
Western Roots Law PLLC
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shelkey@westrootslaw.com

Note: Caption Updated 5/15/2025

\\JUDHLNSRV-DATA\SHARE\JUDGALH2OSRV (DATAVOL)\SHARE\WC-BASIN FOLDERS\41F PD\CASES\186R\MR--41F-186R SJS.DOCX

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

Water Right Number: 41F 107151-00 STATEMENT OF CLAIM

Version: 4 -- SPLIT POST DECREE

Status: ACTIVE

Owners: SEGAL FAMILY TRUST
SEGAL WILLIAM R & ELIZABETH ORR TRUSTEES
1503 MARKER RD
MIDDLETOWN, MD 21769

Priority Date: DECEMBER 31, 1945

Type of Historical Right: USE

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.
THIS CLAIM SERVES 20 CATTLE AND 5 HORSES.

Source Name: WIGWAM 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		SWNWSW	20	7S	1W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: SHEWMAKER-RANKIN 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			W2NW	20	7S	1W	MADISON

THE PLACE OF USE IS RECORDED AS PARCEL B OF CERTIFICATE OF SURVEY NO. 7/2644BA.

Remarks:

SPLIT CLAIM NO. 41F 30161009 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

Water Right Number: 41F 107152-00 STATEMENT OF CLAIM

Version: 4 -- SPLIT POST DECREE

Status: ACTIVE

Owners: SEGAL FAMILY TRUST
SEGAL WILLIAM R & ELIZABETH ORR TRUSTEES
1503 MARKER RD
MIDDLETOWN, MD 21769

Priority Date: MAY 31, 1897

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 385.99 GPM
(0.86 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: 12.83

Source Name: WIGWAM 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		SENESW	19	7S	1W	MADISON

Period of Diversion: MARCH 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: THOMPSON DITCH

Period of Use: MARCH 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	12.83		W2NW	20	7S	1W	MADISON
Total:	12.83						

THE PLACE OF USE IS RECORDED AS PARCEL B OF CERTIFICATE OF SURVEY NO. 7/2644BA.

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.

107152-00107153-00

SPLIT CLAIM NO. 41F 30170920 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

Water Right Number: 41F 30161009 STATEMENT OF CLAIM

Version: 2 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: BRANDON KEIM
1335 STEWART LOOP
BOZEMAN, MT 59718

JESSICA L KINDZERSKI
1335 STEWART LOOP
BOZEMAN, MT 59718

Priority Date: DECEMBER 31, 1945

Type of Historical Right: USE

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.
THIS CLAIM SERVES 60 CATTLE AND 15 HORSES.

Source Name: WIGWAM 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		SWNWSW	20	7S	1W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

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			W2NW	20	7S	1W	MADISON

THE PLACE OF USE IS RECORDED AS PARCEL A OF CERTIFICATE OF SURVEY NO. 7/2644BA.

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41F 107151-00.

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

Water Right Number: 41F 30170920 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: BRANDON KEIM
1335 STEWART LOOP
BOZEMAN, MT 59718

JESSICA L KINDZERSKI
1335 STEWART LOOP
BOZEMAN, MT 59718

Priority Date: MAY 31, 1897

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.02 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: 63.35

Source Name: WIGWAM 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		SENESW	19	7S	1W	MADISON
Period of Diversion:		MARCH 1 TO OCTOBER 31				
Diversion Means:		HEADGATE				
Ditch Name:		THOMPSON DITCH				
Period of Use:		MARCH 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	63.35		W2NW	20	7S	1W	MADISON
Total:		63.35					

THE PLACE OF USE IS RECORDED AS PARCEL A OF CERTIFICATE OF SURVEY NO. 7/2644BA.

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41F 107152-00.