

Montana Water Court
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MONTANA WATER COURT
UPPER MISSOURI DIVISION
MADISON RIVER
BASIN 41F
PRELIMINARY DECREE

CLAIMANTS: ST Bar LLC; Brett Owens; Rita R. Owens

OBJECTORS: Brett Owens; Rita R. Owens

CASE 41F-0098-R-2024

41F 42429-00

41F 42430-00

41F 211858-00

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 have **13 days** from the service date of the notice of filing of this report to file a written objection or request an extension of the objection period. Rule 23, Water Right Adjudication Rules; Rule 6, Montana Rules of Civil Procedure. 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

Brett Owens and Rita R. Owens ("Owens") filed an objection to each of the captioned irrigation claims. Owens objected to all elements of ST Bar LLC ("ST Bar")

claims 41F 42429-00 and 41F 42430-00. Owens filed a self-objection to the point of diversion and means of diversion identified by their irrigation claim 41F 211858-00.

Each captioned claim received issue remarks. Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination. Montana law requires the Water Court to resolve issue remarks. The claims received the following issue remarks:

41F 42429-00

POINT OF DIVERSION AND DITCH NAME 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.

41F 42430-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 75 MINER'S INCHES DECREED IN CASE NO. 1236, MADISON COUNTY. 41F 42430-00, 41F 211858-00.

POINT OF DIVERSION AND DITCH NAME 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.

41F 211858-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 75 MINER'S INCHES DECREED IN CASE NO. 1236, MADISON COUNTY. 41F 42430-00, 41F 211858-00.

DITCH NAME 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.

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 71.00 GPM PER ACRE.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41F TEMPORARY PRELIMINARY DECREE ISSUED 07/25/1984.

CLAIM FILED LATE 03/26/1987. IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

The Preliminary Decree abstract for irrigation claim 41F 42429-00 identifies a May 1, 1903, 2.50 CFS (100.00 miner’s inches) water right for North Meadow Creek

decreed to Samuel A. Oliver in Cause No. 1236, *Marshall v. Elliot*, Fifth Judicial District, Madison County (“Cause No. 1236”), as its historical basis. The Preliminary Decree abstracts for irrigation claim 41F 42430-00 and stock claim 41F 211858-00 identify a May 10, 1889, 1.88 CFS (75.00 miner’s inches) water right for North Meadow Creek decreed to Samuel A. Oliver in Cause No. 1236, as their historical basis.

On August 6, 2025, the parties filed a Stipulation of Settlement. On August 6, 2025, Owens filed a Statement Resolving Objections and Issue Remarks for its claim 41F 211858-00.

Issues

1. Is the decree exceeded resolved?
2. Is the self-objection to Owens’ claim 41F 211858-00 resolved?
3. Are the notice issue remarks resolved?

Findings of fact

1. The flow rate for ST Bar LLC irrigation claim 41F 42429-00 should be reduced from 2.50 CFS to 1.88 CFS.

2. The priority date for Owens’ irrigation claim 41F 211858-00 should be reduced from May 10, 1889, to May 1, 1903.

3. The flow rate for Owens’ irrigation claim 41F 211858-00 should be reduced from 282.74 GPM (0.63 CFS) to 280.50 GPM (0.62 CFS).

4. Owens’ irrigation claim 41F 211858-00 should identify an additional point of diversion and means of diversion claimed by the statement of claim – a pump in the NESENE of Section 30, Township 4 South, Range 1 West.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Mont. Code Ann. § 85-2-227 (2025). 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. § 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. The Montana Water Court may accept a settlement agreement that reduces or limits an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

5. 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. § 85-2-247(2), MCA.

6. If the settlement agreement expands or enlarges an element of a claim, evidence meeting the burden of proof must be provided. If the evidence does not meet the burden of proof, the element shall not be expanded or enlarged. Rule 17(b), W.R.Adj.R.

7. 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. § 85-2-247(2), MCA.

8. 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. § 85-2-248(3), MCA.

9. Late claim fees may be waived by the court. Rule 30, W.R.Adj.R.

Analysis

Issue 1 – decree exceeded resolution

The Stipulation of Settlement explains:

- Owens and ST Bar own property historically owned by Samuel A. Oliver.
- District Court Cause No. 1236 decreed two water rights to Mr. Oliver for North Meadow Creek:
 - May 10, 1889, for 75.00 miner's inches and
 - May 1, 1903, for 100.00 miner's inches.
- In 1973, Owens' predecessor was deeded property along with "25 inches of North Meadow Creek" without identifying which of the two decreed Oliver rights the 25.00 miner's inches came from – the 1889 right or the 1903 right.
- ST Bar's predecessor filed irrigation statement of claim 41F 42430-00 for the entire 75.00 miner's inches of the May 10, 1889 Oliver right and irrigation statement of claim 41F 42429-00 for the entire 100.00 miner's inches of the May 1, 1903 Oliver right. Owens' predecessor filed an irrigation statement of claim for 25.00 miner's inches of the May 1, 1903 Oliver right, resulting in a decree exceeded between 41F 42429-00 and 41F 211858-00 for the 1903 Oliver right.
- In 1996, steps were taken to resolve the decree exceeded between claims 41F 42429-00 and 41F 211858-00 for the May 1, 1903 Oliver right. At that time, the priority date for claim 41F 211858-00 was modified to the May 10, 1889 Oliver decreed right, resulting in the decree exceeded issue remark appearing on the Preliminary Decree abstracts for claims 41F 42430-00 and 41F 211858-00, and resulting in these case proceedings.

Based on the foregoing, during these proceedings, ST Bar agreed to reduce its May 1, 1903 decreed water right, 41F 42429-00, by 25.00 miner's inches, and Owens agreed to reduce the priority date for its claim 41F 211858-00 to its originally claimed May 1, 1903 priority date, thereby resolving the decree exceeded between claims 41F 42430-00 and

41F 211858-00, and ensuring that a decree exceeded did not occur between claims 41F 42429-00 and 41F 211858-00.

The Stipulation of Settlement and its attachments may be viewed on the court's case management system, FullCourt Enterprise, at document sequence 7.00.

Conclusions of law

The reduced flow rate for claim 41F 42429-00 is within the parameters of the statement of claim. The reduced priority date for claim 41F 211858-00 confirms the prima facie statement of claim. The modifications should be made to the abstracts, thereby resolving the decree exceeded between claims 41F 42430-00 and 41F 211858-00, resolving the decree exceeded issue remark appearing on claims 41F 42430-00 and 41F 211858-00, and resolving Owens' objections to claims 41F 42429-00 and 41F 42430-00.

Issue 2 – claim 41F 211858-00 self-objection resolution

Owens objected to the point of diversion and means of diversion of its irrigation claim 41F 211858-00. Owens Statement Resolving Objections and Issue Remarks ("Statement") explains:

- Statement of claim 41F 211858-00 identified two means of diversion¹, "pump" and "ditch."
- Statement of claim 41F 211858-00 identified one point of diversion in the NESENE of Section 30, Township 4 South Range, 1 West for a pump.
- Owens' predecessor filed an amendment to the point of diversion and means of diversion on July 1, 1996, for a headgate located in the SWNESE of Section 30, Township 4 South Range, 1 West. The amendment stated the information should replace rather than supplement the point of diversion and means of diversion identified by the statement of claim.
- According to the directions in the amendment, DNRC replaced the claimed

¹ The statement of claim identifies its means of diversion as "pump" and the means of conveyance as "ditch."

information with the amended information, thereby removing the pump point of diversion. This was an error.

The Statement Resolving Objections and Issue Remarks and its attachments may be viewed on the court's case management system, FullCourt Enterprise, at document sequence 8.00.

Conclusions of law

The evidence entered into the record for point of diversion and means of diversion both confirms and overcomes the point of diversion and means of diversion identified by prima facie statement of claim 41F 211858-00, justifies the modifications to the claim, and resolves Owens' self-objection to the claim.

Issue 3 – issue remark resolution

Claim 41F 211858-00 was filed after the April 30, 1982 claim filing deadline expired. As a result, the claim is defined as a "late claim" under Section 85-2-102(15), MCA, and was deemed forfeit pursuant to Section 85-2-226, MCA. In 1993, the Montana Legislature enacted Section 85-2-221(3), MCA, and provided for the remission of forfeiture of late claims, subject to specified terms and conditions. This claim is a "remitted" late claim.

The abstract of claim 41F 211858-00 appeared with an issue remark citing Section 85-2-221(3), MCA, advising water users that the claim may be subordinate, and therefore junior, to certain permits and reservations of water. Persons holding a post-June 30, 1973 permit or reservation, who relied to their detriment on the failure of a claimant to timely file a claim, were required to file an objection and thereby seek the subordination of any remitted late filed claim to their permit or reservation.

Claim 41F 211858-00 received an issue remark noting it missed the first decree for Basin 41F issued in 1984. This issue remark provided notice to water users that the claim was not previously decreed.

Claim 41F 211858-00 received an issue remark noting the flow rate exceeds the 17.00 GPM/acre guideline for irrigation claims. Information in the claim file does not

indicate the claimed flow rate is historically inaccurate. A guideline, without further explanation, is not evidence sufficient to overcome the prima facie proof afforded the flow rate for this claim. The flow rate of claim 41F 211858-00 does not require modification.

Each of the captioned claims received an issue remark, noting modifications to elements made by the DNRC during claims examination. The issue remark instructed claimants and other water users that if no objections were filed to the modifications, the modified elements would remain as they appear on the Preliminary Decree abstracts.

Water users were given the opportunity to review the claims and file an objection. The objections filed to each captioned claim are resolved by these case proceedings. No further modifications to the claims are required.

Conclusions of law

The issue remarks concerning claim 41F 211858-00's late claim status and noting the lack of its inclusion in the previous Basin 41F decree served their notice purpose.

The flow rate issue remark appearing on irrigation claim 41F 211858-00 does not raise an issue that requires resolution by the court. The flow rate issue remark is resolved.

The issue remark on each captioned claim noting modification of elements by the DNRC served its notice purpose.

Recommendations

Irrigation claim 41F 42429-00 should be modified as follows to accurately reflect historical use.

<u>FLOW RATE:</u>	2.50 CFS	1.88 CFS
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Irrigation claim 41F 211858-00 should be modified as follows to accurately reflect historical use.

<u>PRIORITY DATE:</u>	MAY 10, 1889	MAY 1, 1903
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<u>FLOW RATE:</u>	282.74 GPM	280.50 GPM (0.62 CFS)
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<u>POINT OF DIVERSION AND MEANS OF DIVERSION:</u>		
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<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	SWNE	30	4S	1W	MADISON

Diversion Means: HEADGATE
Ditch Name: LOWER SHELLHAMER DITCH

DITCH NAME IS ALSO KNOWN AS JIMMY ~~BONNER~~ BONER DITCH

NESENE	30	4S	1W	MADISON
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Diversion Means: PUMP

Irrigation claim 41F 42430-00 accurately reflects historical use. No changes to the elements of the claim should be made.

The issue remarks should be removed from the claim abstracts.

The late claim fee assessment for Owens irrigation claim 41F 211858-00 should be waived as authorized by Rule 30, W.R.Adj.R.

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 Email:

David L Weaver
NASH, ZIMMER & WEAVER
dweaver@daveweaverlaw.com
dweaver@aspenprof.com
(Atty for: ST Bar LLC)

Calli J. Michaels
Michaels Law, PLLC
cmichaels@mlawmt.com
(Atty for: Brett Owens; Rita R. Owens)

Note: Service List Updated 10-16-2025

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

Water Right Number: 41F 42429-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ST BAR LLC
PO BOX 298
MCALLISTER, MT 59740

Priority Date: MAY 1, 1903

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.88 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: 90.00

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		NWSWSWSE	19	4S	1W	MADISON

Period of Diversion: MAY 1 TO JUNE 30

Diversion Means: HEADGATE

Ditch Name: OLIVER DITCH NO. 3

2		SESWSWSE	19	4S	1W	MADISON
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Period of Diversion: MAY 1 TO JUNE 30

Diversion Means: HEADGATE

Ditch Name: OLIVER DITCH NO. 2

Period of Use: MAY 1 TO JUNE 30

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	30.00		NWNE	30	4S	1W	MADISON
2	30.00		SWNE	30	4S	1W	MADISON
3	5.00		SWNE	30	4S	1W	MADISON
4	10.00		NWSENE	30	4S	1W	MADISON
5	10.00		SWSENE	30	4S	1W	MADISON
6	3.00		SENE	30	4S	1W	MADISON
7	2.00		NESENE	30	4S	1W	MADISON

Total: 90.00

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.

42429-00	42430-00	42431-00
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MADISON RIVER
BASIN 41F**

Water Right Number: 41F 42430-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ST BAR LLC
PO BOX 298
MCALLISTER, MT 59740

Priority Date: MAY 10, 1889

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.88 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: 90.00

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		NWSWSWSE	19	4S	1W	MADISON

Period of Diversion: APRIL 15 TO SEPTEMBER 30

Diversion Means: HEADGATE

Ditch Name: OLIVER DITCH NO. 3

2		SESWSWSE	19	4S	1W	MADISON
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Period of Diversion: APRIL 15 TO SEPTEMBER 30

Diversion Means: HEADGATE

Ditch Name: OLIVER DITCH NO. 2

Period of Use: APRIL 15 TO SEPTEMBER 30

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	30.00		NWNE	30	4S	1W	MADISON
2	30.00		SWNE	30	4S	1W	MADISON
3	5.00		SWNE	30	4S	1W	MADISON
4	10.00		NWSENE	30	4S	1W	MADISON
5	10.00		SWSENE	30	4S	1W	MADISON
6	3.00		SENE	30	4S	1W	MADISON
7	2.00		NESENE	30	4S	1W	MADISON

Total: 90.00

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.

42429-00	42430-00	42431-00
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MADISON RIVER
BASIN 41F**

Water Right Number: 41F 211858-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: BRETT OWENS
PO BOX 126
MCALLISTER, MT 59740

RITA R OWENS
PO BOX 126
MCALLISTER, MT 59740-0126

Priority Date: MAY 1, 1903

CLAIM FILED LATE 03/26/1987. AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: DECREEED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 280.50 GPM

0.62 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: 4.00

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		SWNE	30	4S	1W	MADISON

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: LOWER SHELLHAMER DITCH

2		NESE	30	4S	1W	MADISON
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Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: PUMP

DITCH NAME IS ALSO KNOWN AS JIMMY BONER DITCH

Period of Use: APRIL 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	4.00		NESENE	30	4S	1W	MADISON
Total:	4.00						