

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

CLAIMANTS: Bull Wheel Ranch HOA Inc.; James W.
Combes, Joshua Edwards, Kimberly M. Mize,
Jacqueline K. Shirley; Charles Lutz-Renick;
Matheson Renick

CASE 41F-0022-R-2024
41F 136417-00
41F 214902-00

OBJECTOR: United States of America (Bureau of Reclamation)

NOTICE OF INTENT TO APPEAR: Alton Living 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

Statement of the case

The United States of America (Bureau of Reclamation) filed an objection to irrigation claim 41F 136417-00, and Alton Living Trust filed a notice of intent to appear for irrigation claim 41F 136417-00.

Irrigation claim 41F 136417-00 appeared in the Preliminary Decree for this Basin with the following issue remarks:

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. 1185, MADISON COUNTY. 41F 136417-00 AND 41F 214902-00.

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.

Irrigation claim 41F 214902-00 appeared in the Preliminary Decree for this Basin with the following issue remarks:

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. 1185, MADISON COUNTY. 41F 136417-00, 41F 214902-00.

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 34.00 GPM PER ACRE.

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

CLAIM FILED LATE 11/02/1995. 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 MADISON COUNTY WATER RESOURCES SURVEY (1954) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination. Montana law requires the Water Court to resolve issue remarks.

On April 1, 2025, the President of Bull Wheel Ranch HOA Inc. filed a Request to Withdraw Statement of Claim 41F 136417-00. On April 3, 2025, the BOR filed a Statement in Response to Bull Wheel Ranch HOA, Inc. Filing stating “Dismissal of Claim 41F 136417-00 pursuant to the HOA’s withdrawal will resolve all the United States’ objections at issue in this case.” On April 8, 2025, Alton Living Trust filed a Statement of Position, informing the court that the dismissal of claim 41F 136417-00 would “resolve all issues associated with Alton’s Notice of Intent to Appear” for the claim. A May 22, 2025 order set deadlines for the resolution of the zero acres irrigated issue remark appearing on irrigation claim 41F 214902-00. On June 5, 2025, the DNRC filed a Memorandum recommending removal of the zero acres irrigated issue remark.

Issues

1. Should irrigation claim 41F 136417-00 be dismissed?
2. Are the issue remarks appearing on irrigation claim 41F 214902-00 resolved?

Findings of fact

1. Irrigation claim 41F 136417-00 should be dismissed from the adjudication.
2. On June 5, 2025, DNRC filed a Memorandum concerning the zero acres irrigated issue remark appearing on irrigation claim 41F 214902-00 recommending removal of the issue remark with no changes to the maximum acres irrigated.
3. The Preliminary Decree abstract for irrigation claim 41F 214902-00 identifies the historically accurate maximum acres irrigated and flow rate.

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. 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. 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. Section 85-2-247(2), MCA.

6. If the Montana Water Court cannot resolve issue remarks based upon information in the claim file or information available to the Court, claimants shall be required to confer with the DNRC to attempt resolution of the issue remarks. Claimants shall file documentation to resolve the issue remarks, and the DNRC shall submit recommendations regarding disposition of the issue remarks. Section 85-2-248(5), 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. Late claim fees may be waived by the court. Rule 30, W.R.Adj.R.

Analysis

Issue remark resolution

The DNRC Database identifies Bull Wheel Ranch HOA, Inc. as the current claimant of water right claim 41F 136417-00. Bull Wheel Ranch HOA, Inc. agrees it has no existing water right to claim. Irrigation claim 41F 136417-00 should be dismissed

from the adjudication thereby resolving the decree exceeded situation between the captioned claims.

DNRC reported the historical aerial photos reviewed and referenced by the previous DNRC claims examiner for claim 41F 214902-00 “show irrigation at the claimed place of use.” DNRC recommended “removal of the zero acres irrigated issue remark” from irrigation claim 41F 214902-00.

The DNRC Memorandum and its attachments may be viewed on the court’s case management system, FullCourt Enterprise, at document sequence 12.00.

The issue remark noting flow rate may require adjustment based upon resolution of the maximum acres irrigated issue is resolved. The maximum acres irrigated were not modified. Claim 41F 214902-00 also appeared with an issue remark noting the flow rate exceeds a 17.00 GPM/acre guideline. 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 214902-00 does not require modification.

Claim 41F 214902-00 was filed after the April 30, 1982 claim filing deadline expired. As a result, the claim is defined as a “late claim” under § 85-2-102(15), MCA, and was deemed forfeit pursuant to § 85-2-226, MCA. In 1993, the Montana Legislature enacted § 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 this claim appeared with an issue remark citing § 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.

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

Water users 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.

Conclusions of law

The Request to Withdraw Statement of Claim 41F 136417-00 is properly filed and the claim should be dismissed. Dismissal of claim 41F 136417-00 resolves the decree exceeded situation with claim 41F 214902-00, resolves the decree exceeded issue remark appearing on claim 41F 214902-00, resolves the BOR's objection, and Alton Living Trust's notice of intent to appear.

Based upon DNRC's discussion, the zero acres irrigated issue remark appearing on claim 41F 214902-00 does not overcome prima facie statement of claim 41F 214902-00. The zero acres irrigated issue remark is resolved.

The flow rate issue remarks appearing on irrigation claim 41F 214902-00 do not raise an issue that requires resolution by the court. The flow rate issue remarks are resolved.

The late claim issue remark and lack of the claim's inclusion in the previous decree issue remark on claim 41F 214902-00 served their notice purpose.

Recommendations

Irrigation claim 41F 136417-00 should be dismissed from the adjudication. The dismissal of claim 41F 136417-00 moots the issue remarks appearing on the claim.

Irrigation claim 41F 214902-00 accurately reflects historical use. No changes to the elements of the claim should be made. The issue remarks should be removed from the abstract of claim 41F 214902-00, and the late claim fee assessment 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 USPS Mail

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Ennis MT 59729

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Kimberly M. Mize
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Ennis MT 59729

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

Water Right Number: **41F 136417-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: BULL WHEEL RANCH HOA INC
 %STRONLIN, STUART
 90 DIAMONDBACK RD
 ENNIS, MT 59729

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: BLAINE SPRING CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41F 214902-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners:

JAMES W COMBES
330 RANCHETTE AVE
BATTLE MOUNTAIN, NV 89820-3304

JOSHUA EDWARDS
22 RED ROCK TRAIL
ENNIS, MT 59729

CHARLES LUTZ-RENICK
16 RED ROCK TR
ENNIS, MT 59729-8851

KIMBERLY M MIZE
330 RANCHETTE AVE
BATTLE MOUNTAIN, NV 89820-3304

MATHESON RENICK
16 RED ROCK TR
ENNIS, MT 59729-8851

JACQUELINE K SHIRLEY
8 RED ROCK TRAIL
ENNIS, MT 59729

Priority Date: MAY 1, 1883

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 11/02/1995. 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: DECREE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 1.20 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: 16.00

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		NESENE	24	7S	2W	MADISON
Period of Diversion: APRIL 1 TO SEPTEMBER 30						
Diversion Means: HEADGATE						
Subdivision: SHINING MOUNTAINS SUBD NO 1						
Ditch Name: COAD DITCH						
Period of Use: APRIL 1 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	4.00		E2SW	18	7S	1W	MADISON
Subdivision: SHINING MOUNTAINS SUBD NO 1 TRACT/LOT: 308 BLOCK: A							
2	4.00		SW	18	7S	1W	MADISON
Subdivision: SHINING MOUNTAINS SUBD NO 1 TRACT/LOT: 309 BLOCK: A							
3	4.00		SW	18	7S	1W	MADISON
Subdivision: SHINING MOUNTAINS SUBD NO 1 TRACT/LOT: 310 BLOCK: A							
4	4.00		SW	18	7S	1W	MADISON
Subdivision: SHINING MOUNTAINS SUBD NO 1 TRACT/LOT: 311 BLOCK: A							
Total:		16.00					