

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

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

CLAIMANT: Davidson Property Holdings LLC

OBJECTOR: West Madison Canal Co.

NOTICE OF INTENT TO APPEAR: Alton Living Trust

CASE 41F-0032-R-2024
41F 132915-00

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

West Madison Canal Co. filed an objection to all elements of stock claim 41F 132915-00. Alton Living Trust filed a notice of intent to appear for the claim.

Stock claim 41F 132915-00 appeared in the Preliminary Decree with the following issue remark.

DITCH NAME, MEANS OF DIVERSION, AND SOURCE 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.

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

On August 12, 2025, the parties filed a Stipulation and Agreement.¹

Issues

1. Should the court accept the stipulated terms?
2. Is the issue remark resolved?

Findings of fact

1. Stock statement of claim 41F 132915-00 identifies a place of use in the NWNE of Section 28, Township 5 South, Range 1 West, Madison County for 5 horses.

2. The maps attached to prima facie statement of claim 41F 132915-00 support the historical accuracy of the stipulated point of diversion, place of use, source, and means of diversion.

3. The point of diversion and place of use for stock claim 41F 132915-00 should be the NWNWNE of Section 28, Township 5 South, Range 1 West, Madison County.

3. The source for stock claim 41F 132915-00 should be Spring.

¹ The parties stipulated to a modified ownership. The court does not update ownership records. If Davidson Property Holdings LLC wishes to modify the ownership of the claim it should contact the Bozeman Regional Office, DNRC.

4. The means of diversion for stock claim 41F 132915-00 should be Livestock Direct from Source.

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

5. 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.

6. 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.

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.

Analysis

Issue 1 - stipulated terms

Statement of claim 41F 132915-00 identifies the Madison River as its source and the point of diversion in the NESWNW of Section 29, Township 6 South, Range 1 West. However, the attachments to prima facie statement of claim 41F 132915-00 include a map from the 1954 Madison County Water Resources Survey (reprinted 1965) (“Madison County WRS”) modified to depict the point of diversion and place of use. The modified Madison County WRS map includes the following notation “P.O.D. at P.O.U.” A hand drawn map, also attached to prima facie statement of claim 41F 132915-00, reiterates the point of diversion is at the place of use, and depicts a drainage ditch at the place of use in the NWNWNE of Section 28, Township 5 South, Range 1 West. The parties stipulate that the point of diversion and place of use should reflect this legal land description.

The parties further stipulate that the source should be modified to “Spring” and the means of diversion to “Livestock Direct from Source.” It appears DNRC “clarified” the means of diversion identified by the statement of claim to “ditch” during verification in preparation for issuing the Temporary Preliminary Decree. Clarification was a common practice during the early years of the adjudication. Subsequently, during reexamination and in preparation for issuing the Preliminary Decree, DNRC modified the source name to Blaine Spring Creek and the means of diversion to the West Madison Canal based upon the earlier clarification by DNRC to “ditch,” perpetuating the confusion with source and means of diversion. DNRC added an issue remark to the claim noting these actions and notifying claimant and other water users that if no objections were filed to the claim the modified elements would remain as they appeared on the Preliminary Decree abstract. West Madison Canal objected to all elements of the claim. Based upon the notations on the maps attached to the statement of claim, and the Madison County WRS map, there are no sources or ditches located where the point of diversion and place of use are

depicted by the maps attached to the statement of claim. Therefore, the stipulated source “Spring” and means of diversion “Livestock Direct from Source” are logical based upon the maps attached to the prima facie statement of claim and the history provided by the claim’s verification materials and claim’s examination materials.

The Stipulation and Agreement may be viewed on the court’s case management system, FullCourt Enterprise, at document sequence 11.00.

Conclusions of law

The parties’ stipulated modifications to point of diversion, place of use, source, and means of diversion are supported by the maps attached to prima facie statement of claim 41F 132915-00 and information in the claim file. This evidence overcomes the prima facie proof afforded the source, point of diversion, and means of diversion identified by statement of claim 41F 132915-00. The proposed modification to the place of use is a refinement. No further proof is necessary to refine the place of use. The proposed modifications to the claim are justified.

The Stipulation should be accepted by the court thereby resolving West Madison Canal Co.’s objection and Alton Living Trust’s notice of intent to appear.

Issue 2 – issue remark resolution

Claim 41F 132915-00 received an issue remark providing notice to water users that the ditch name, means of diversion and source name were modified by DNRC during reexamination. Water users were given the opportunity to review the claim and file an objection. West Madison Canal Co. objected to all elements of stock claim 41F 132915-00. West Madison Canal Co.’s objection to the elements identified by the issue remark were resolved during these case proceedings.

Conclusion of law

The notice issue remark served its purpose.

Recommendations

Stock claim 41F 132915-00 should be modified as follows to accurately reflect historical use.

SOURCE NAME: ~~BLAINE SPRING CREEK~~ **SPRING**

POINT OF DIVERSION:

| <u>GOVT LOT</u> | <u>QTR SEC</u> | <u>SEC</u> | <u>TWP</u> | <u>RGE</u> | <u>COUNTY</u> |
|-----------------|----------------|------------|------------|------------|---------------|
| NWNWNE | NESWNW | 28 29 | 5S 6S | 1W | MADISON |

Diversion Means: ~~HEADGATE~~ **LIVESTOCK DIRECT FROM SOURCE**
Ditch Name: ~~WEST MADISON CANAL~~

PLACE OF USE:

| <u>ACRES</u> | <u>GOVT LOT</u> | <u>QTR SEC</u> | <u>SEC</u> | <u>TWP</u> | <u>RGE</u> | <u>COUNTY</u> |
|--------------|-----------------|----------------|------------|------------|------------|---------------|
| | | NWNWNE | 28 | 5S | 1W | MADISON |

The issue remark should be removed from the claim abstract.

A Post Decree Abstract of Water Right Claim accompanies 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

Davidson Property Holdings LLC
5098 US Hwy 287 N
Ennis MT 59729

Service via Electronic Mail

Peter G. Scott
Peter G. Scott, Law Offices, PLLC
peter@scott-law.com
office@scott-law.com

Michael J. L. Cusick
Cusick, Farve & Michael, P.C.
office@cmrlawmt.com

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

Water Right Number: 41F 132915-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: DAVIDSON PROPERTY HOLDINGS LLC
5098 US HWY 287 N
ENNIS, MT 59729

Priority Date: JANUARY 28, 1890

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.

Source Name: SPRING

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 | | NWNWNE | 28 | 5S | 1W | MADISON |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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 | | | NWNWNE | 28 | 5S | 1W | MADISON |