

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; TBLC Ltd.

OBJECTOR: United States of America (Bureau of Reclamation)

CASE 41F-0039-R-2024

41F 107153-00

41F 136449-00

41F 30161024

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 107153-00 (owned by Segal Family Trust). Split claim number 41F 30161024 (owned by Jessica L. Kindzerski and Brandon Keim) was not included in the Basin 41F Preliminary Decree.

The split process implemented for claims 41F 107153-00 and 41F 30161024 appeared to be incomplete and the paperwork for the split was not included in the claim files. The court requested information from Segal Family Trust, Jessica L. Kindzerski and Brandon Keim for each claim to fully complete the split request. On May 7, 2025, counsel for Segal Family Trust, Kirs A. Shelkey, filed a proposed resolution. 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 irrigation claim 41F 107153-00 to Brandon Keim and Jessica Kindzerski. Segal Family Trust retained 12.83 acres identified as Parcel B along with thirty percent of irrigation claim 41F 107153-00. Segal Family Trust's proposed resolution and exhibits may be viewed on the court's case management system, FullCourt Enterprise, at document sequence 14.00.

Segal Family Trust irrigation claim 41F 107153-00 received 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. 944, MADISON COUNTY. 41F 107153-00, 41F 136449-00.

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.

TBLC, Ltd. irrigation claim 41F 136449-00 received 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. 944, MADISON COUNTY. 41F 107153-00, 41F 136449-00.

A LATE OBJECTION HAS BEEN FILED TO THE OWNERSHIP, PLACE OF USE, ACRES IRRIGATED, VOLUME AND FLOW RATE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

THE PLACE OF USE E2NW SEC. 20 7S 1W APPEAR TO BE LOCATED W2NW SEC. 20 7S 1W.

POINT OF DIVERSION 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.

Brandon Keim and Jessica L. Kindzerski irrigation claim 41F 30161024 received 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. 944, MADISON COUNTY. 41F 107153-00, 41F 136449-00.

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.

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

The United States of America (Bureau of Reclamation) (“BOR”) filed an objection to irrigation claim 41F 136449-00.

On May 1, 2025, TBLC, Ltd. filed an Unopposed Motion to Withdraw Water Right Claim 41F 136449-00. On May 2, 2025, the BOR filed a Statement Regarding Motion to Withdraw stating “withdrawal of Water Right Claim No. 41F 136449-00 would resolve its objection to Claim No. 136449-00.”

Issues

1. Should irrigation claim 41F 136449-00 be dismissed?
2. Are the issue remarks appearing on the claims resolved?
3. Is the split of claim 41F 107153-00 complete and accurate?

Findings of fact

The DNRC Database identifies TBLC, Ltd. as the current claimant of water right claim 41F 136449-00. Irrigation claim 41F 136449-00 should be dismissed from the adjudication based upon TBLC, Ltd.’s unopposed motion to withdraw the claim.

Based upon the foregoing procedural history and the agreed upon request to split claim 41F 107153-00, the following modifications should be made to the following claims.

Parent Irrigation Claim 41F 107153-00 (Owned by Segal Family Trust)

FLOW RATE: ~~1.88 CFS~~ **251.34 GPM (0.56 CFS)**

MAXIMUM ACRES: ~~80.00~~ **12.83**

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>
TOTAL:	12.83 80.00		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 30161024 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

Split Irrigation Claim 41F 30161024 (Owned by Jessica Kindzerski and Brandon Keim)

FLOW RATE: ~~1.88 CFS~~ **1.32 CFS**

MAXIMUM ACRES: ~~56.00~~ **63.35**

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>
TOTAL:	63.35 80.00		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 107153-00.

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. 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.

Conclusions of law

TBLC, Ltd.’s request to withdraw statement of claim 41F 136449-00 is properly filed. Claim 41F 136449-00 should be dismissed. Dismissal of claim 41F 136449-00 resolves the decree exceeded situation between the captioned claims, resolves the decree exceeded issue remark appearing on the captioned claims, moots all issue remarks appearing on claim 41F 136449-00¹, and resolves the BOR’s objection to claim 41F

¹ Several individuals filed late objections to irrigation claim 41F 136449-00. The court added an issue remark to 41F 136449-00 claim. The issue remark noted the elements included in the late objections and noted that the late objections would be heard after proper notice on the next objection list. The next objection list for this basin was issued. The court issued an order setting a deadline for the late objectors to appear and indicate their intent to participate in these proceedings. The order stated the late objectors’ failure to comply with the deadline would indicate their non-participation in these proceedings and result in their dismissal from this case. The late objectors did not appear. A second order set a deadline for other parties in this case to file a Rule 25, M. R. Civ. P. motion if they wished to assume the late objections. The order stated the remaining parties’ failure to comply with the

136449-00.

The issue remark on irrigation claim 41F 107153-00 noting modification of the ditch name served its notice purpose. 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 irrigation claim 41F 107153-00.

The modifications to parent (original) irrigation claim 41F 107153-00 in this proceeding do not constitute challenges to the prima facie status of the claim. The accurate representation of the split of claim 41F 107153-00 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 claim accurately.

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.

deadline would indicate their intention not to assume the objections and the objections would be dismissed. None of the other parties filed a Rule 25, M. R. Civ. P. motion with the court. Water users were given the opportunity to review the claim and file an objection to the elements mentioned in the late objection issue remark. The deadline to file objections expired. No party assumed the late objections to irrigation claim 41F 136449-00, and the late objection issue remark served its notice purpose.

Service via USPS Mail

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Service List Updated 8/28/2025

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

Water Right Number: 41F 107153-00 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 1, 1897

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 251.34 GPM
0.56 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:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
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:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
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 30161024 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 136449-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Owners: TBLC LTD
PO BOX 1047
HASTINGS, NE 68902-1047

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: WIGWAM 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 30161024 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: MAY 1, 1897

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Flow Rate: 1.32 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 107153-00.