

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

CLAIMANTS: Valley Garden Land & Cattle LLC; **Montana State Board of Land Commissioners – Forestry and Trust Lands Division**

CASE 41F-0197-R-2025
41F 45973-00
41F 214427-00

OBJECTORS: Valley Garden Land & Cattle LLC; Montana State Board of Land Commissioners – Forestry and Trust Lands Division

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

Stock claim 41F 45973-00 received a self-objection from claimant Valley Garden Land & Cattle LLC (“Valley Garden”). Valley Garden objected to the means of diversion, point of diversion, and place of use identified by claim 41F 45973-00.

The Montana State Board of Land Commissioners – Forestry and Trust Lands Division (“Trust Lands”) filed an objection to the ownership of claim 41F 45973-00.

The claim received the following notice issue remark:

SOURCE 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 and objections.

Valley Garden filed its Proposed Resolution for Claim 41F 45973-00 on February 3, 2026, stating, “If adopted, this proposed resolution resolves The Land Board’s objection to Water Right No. 41F 45973-00.”

Resolution of the objections in this case results in a clerical correction and a motion to amend the elements of Trust Lands’ implied stock claim 41F 214427-00, generated from claim 41F 45973-00 during Temporary Preliminary Decree proceedings. This case is reconsolidated to include Trust Lands’ implied claim 41F 214427-00. The updated caption reflects the reconsolidated case. Claim 41F 214427-00 received no objections or issue remarks.

Issues

1. Are the objections to stock claim 41F 45973-00 resolved?
2. Should Trust Lands’ implied stock claim 41F 214427-00 be corrected and amended?
3. Is the notice issue remark on claim 41F 45973-00 resolved?

Findings of fact

1. The historically accurate means of diversion and point of diversion for Valley Garden stock claim 41F 45973-00 and Trust Lands stock claim 41F 214427-00 are a “dike” in the SWSESE of Section 21, Township 5 South, Range 1 West, Madison County.

2. The historically accurate place of use for Valley Garden stock claim 41F 45973-00 is the SW of Section 10, the W2W2 of Section 15, and the E2 of Section 21, Township 5 South, Range 1 West, Madison County.

3. The historically accurate place of use for Trust Lands stock claim 41F 214427-00 is the E2SE of Section 16, Township 5 South, Range 1 West, Madison County.

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. 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. § 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. Notice by publication of an amendment is required if there is the possibility of adverse effect to other water users. § 85-2-233(6), MCA.

5. Rule 15, M.R.Civ.P., restricts the scope of an amendment to the conduct,

transaction, or occurrence set forth in the original pleading - the “same set of operative facts as contained in the original pleading.” *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-23, 708 P.2d 1014, 1017 (1985). The requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15, 504 P.2d 277, 281 (1972).

6. The party seeking to amend a water right claim has the burden to show, by a preponderance of the evidence, that the claim elements they challenge do not accurately reflect the beneficial use of the water rights as they existed prior to July 1, 1973. *Nelson v. Brooks*, 2014 MT 120, ¶34, 375 Mont. 86, 329 P.3d 558; Rule 19, 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. A clerical mistake or mistake arising from omission or oversight may be corrected by the court at any time. Rule 60(a), M.R.Civ.P.

Analysis

Issues 1 and 2 - objection resolution 41F 45973-00; amendment and correction 41F 214427-00

Valley Garden Ranch filed stock statement of claim 41F 45973-00. The statement of claim identified its source as Valley Garden Drainage Ditch, a tributary of the Madison River with points of diversion direct from the source located in the NESW and SWSW of Section 10, the W2NE of Section 15, the E2SE of Section 16, and the E2NE, NWSE, SWSE of Section 21, all in Township 5 North, Range 1 West, Madison County. Statement of claim 41F 45973-00 identified places of use in the SE and E2SW of Section 10, all of Section 15, the E2NESE and SESE of Section 16, the E2NE and E2SE of Section 21, the W2NE, W2SE, and W2 of Section 22, and the W2 of Section 27, all in

Township 5 North, Range 1 West, Madison County.

Attached to and in support of statement of claim 41F 45973-00 was a notice of appropriation filed by Valley Garden Ranch Inc. for the Valley Garden Drainage Ditch. The filed notice of appropriation identified the place of use in Sections 9 and 16, the W2 of Section 10, and the E2 of Section 21, all in Township 5 North, Range 1 West, Madison County.

Attached to and in support of statement of claim 41F 45973-00 were hand drawn maps depicting the Valley Garden Drainage Ditch in portions of the SW and NW of Sections 10 and 15, the SE of Section 16, the SE and NE of Section 21, the SW of Section 22, and the SW and NW of Section 27, all in Township 5 North, Range 1 West, Madison County.

After claims examination by the DNRC, the Temporary Preliminary Decree abstract identified the points of diversion and the places of use as the NESW and SWSW of Section 10, the W2NW of Section 15, the E2SE of Section 16, the E2NE, NWSE, and SWSE of Section 21, all in Township 5 North, Range 1 West, Madison County.

During Temporary Preliminary Decree proceedings, Trust Lands filed an objection to Valley Garden's stock claim 41F 45973-00 stating the legal land description for the point of diversion and place of use in Section 16 were owned by Trust Lands. The court adjudicated claim 41F 45973-00 in Case 41F-26. Valley Garden and Trust Lands filed a stipulation. The court accepted the stipulated terms and generated implied claim 41F 214427-00 from claim 41F 45973-00 for the Trust Lands portion of the claim located in Section 16, Township 5 North, Range 1 West, Madison County.

Valley Garden's proposed modified point of diversion and place of use is supported by a combination of the prima facie stock statement of claim 41F 45973-00, the hand drawn maps attached to and in support of stock statement of claim 41F 45973-00, and the filed notice of appropriation attached to and in support of stock statement of claim 41F 45973-00. The modified means of diversion from "livestock direct from source" to "dike" makes logical sense given the stock drink directly from the Valley Garden Drainage Ditch, which by definition collects water by some means of diversion

from an Unnamed Tributary of Ennis Lake.

Valley Garden's proposed implied claim brings to light a clerical error in the February 22, 1994 Master's Report and the post decree abstract generated for Trust Lands' implied claim 41F 214427-00. The Section 16 place of use identified by the Master's Report and Preliminary Decree abstract for claim 41F 214427-00 included a clerical error based upon the July 24, 1991 Stipulation. In the 1991 Stipulation, Valley Garden and Trust Lands stipulated as follows:

As to Claim No. 45973, because the State owns the SE of Section 16 T05S R01W, **change E1/2 Section 16 T05S R01W to NE1/4 Section 16 T05S R01W** and generate an **Implied Claim on SE1/4 Section 16 T05S R01W in the name of the State.** (emphasis added)

Valley Garden explains that the Valley Garden Drainage Ditch, where the stock drink from for claim 41F 45973-00, does not pass through the NE of Section 16, Township 5 South, Range 1 West as stipulated to in 1991 and requests removal of any reference to Section 16 in the place of use for Valley Garden's stock claim 41F 45973-00. Valley Garden's objection requests that Trust Lands' place of use be corrected to the **E2SE** of Section 16, Township 5 South, Range 1 West as stipulated to in 1991. Trust Lands agrees with this correction.

The proposed modification to the means of diversion and point of diversion for Valley Garden claim 41F 45973-00 results in an agreed upon amendment of Trust Lands' implied claim 41F 214427-00. The amended means of diversion and point of diversion for claim 41F 214427-00 do not have the ability to adversely affect other water users. No other water users have points of diversion between the claimed and amended legal land description for the point of diversion. The amended means of diversion refines the information identified by the claim. No public notice of the amendments is necessary.

The proposed modifications to both claims are acceptable without further notice to stipulating parties because Valley Garden and Trust Lands were the original stipulating parties in Temporary Preliminary Decree Case 41F-26.

Conclusions of law

For stock claim 41F 45973-00, the modified means of diversion, point of diversion, and place of use are supported by the prima facie statement of claim and the attachments in support of the prima facie statement of claim, or overcome the prima facie statement of claim where necessary. The record before the court justifies the modifications proposed by Valley Garden's objection to claim 41F 45973-00 and resolves Valley Garden's objection to the claim.

Clerical errors may be corrected at any time. The requested correction to the place of use for Trust Lands' implied stock claim 41F 214427-00 should be completed, and the amended means of diversion and point of diversion is supported by the prima facie statement of claim for parent claim 41F 45973-00 and the attachments in support of the prima facie statement of claim for parent claim 41F 45973-00, or overcome the prima facie statement of claim for parent claim 41F 45973-00 where necessary. The record before the court justifies the modifications proposed by Trust Lands' objection to claim 41F 45973-00, the amendments proposed to claim 41F 214427-00, and correction of the place of use clerical error on claim 41F 214427-00. The modifications resolve Trust Lands' objection to claim 41F 45973-00.

Issue 3 - issue remark resolution 41F 45973-00

Valley Garden stock claim 41F 45973-00 appeared in the Preliminary Decree with the following issue remark:

SOURCE 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.

Water users were given the opportunity to review the claim and file an objection. The deadline to file objections expired. The objections filed to claim 41F 45973-00 were not to source name and are resolved by these case proceedings.

Conclusion of law

The issue remark on claim 41F 45973-00 served its notice purpose.

Recommendations

Valley Garden stock claim 41F 45973-00 should be modified as follows to accurately reflect historical use.

POINT OF DIVERSION AND MEANS OF DIVERSION:

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	NESW	10	5S	1W	MADISON
	SWSW	10	5S	1W	MADISON
	W2NW	15	5S	1W	MADISON
	NESE	16	5S	1W	MADISON
	E2NE	21	5S	1W	MADISON
	NWSE	21	5S	1W	MADISON
SWSESE	SWSE	21	5S	1W	MADISON

Diversion Means: ~~LIVESTOCK DIRECT FROM SOURCE~~ **DIKE**

PLACE OF USE:

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	NESW	10	5S	1W	MADISON
	SWSW	10	5S	1W	MADISON
W2W2	W2NW	15	5S	1W	MADISON
	NESE	16	5S	1W	MADISON
	E2NE	21	5S	1W	MADISON
	NWSE	21	5S	1W	MADISON
	SWSE	21	5S	1W	MADISON

The notice issue remark should be removed from the abstract of claim 41F 45973-00.

Trust Lands stock claim 41F 214427-00 should be modified as follows to accurately reflect historical use.

POINT OF DIVERSION AND MEANS OF DIVERSION:

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SWSESE	SESE	21 16	5S	1W	MADISON

Diversion Means: ~~LIVESTOCK DIRECT FROM SOURCE~~ **DIKE**

PLACE OF USE:

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
E2SE	SESE	16	5S	1W	MADISON

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 Electronic Mail:

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

Water Right Number: 41F 45973-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: VALLEY GARDEN LAND & CATTLE LLC
3000 TURTLE CREEK BLVD
DALLAS, TX 75219-6268

Priority Date: JUNE 28, 1973

Type of Historical Right: FILED

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 STOCKWATERING 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: WASTE & SEEPAGE, UNNAMED TRIBUTARY OF ENNIS LAKE

Source Type: SURFACE WATER

THE SOURCE IS WATER COLLECTED IN THE VALLEY GARDEN DRAINAGE DITCH.

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		SWSESE	21	5S	1W	MADISON

Period of Diversion: JUNE 1 TO NOVEMBER 1

Diversion Means: DIKE

Period of Use: JUNE 1 TO NOVEMBER 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			SW	10	5S	1W	MADISON
2			W2W2	15	5S	1W	MADISON
3			E2	21	5S	1W	MADISON

Remarks:

IMPLIED CLAIM NO. 41F 214427-00 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 214427-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
FORESTRY AND TRUST LANDS DIVISION
PO BOX 201601
HELENA, MT 59620-1601

***Priority Date:** JUNE 28, 1973

***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 STOCKWATERING 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:** WASTE & SEEPAGE, UNNAMED TRIBUTARY OF ENNIS LAKE

Source Type: SURFACE WATER

THE SOURCE IS WATER COLLECTED IN THE VALLEY GARDEN DRAINAGE DITCH.

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		SWSESE	21	5S	1W	MADISON

Period of Diversion: JUNE 1 TO NOVEMBER 1

Diversion Means: DIKE

***Period of Use:** JUNE 1 TO NOVEMBER 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			E2SE	16	5S	1W	MADISON

Remarks:

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41F 45973-00.