

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

CLAIMANT: Alton Living Trust

OBJECTOR: Alton Living Trust; United States of America,
Bureau of Reclamation

NOTICE OF INTENT TO APPEAR PARTY: United States of
America, Bureau of Reclamation

CASE 41F-0006-R-2025

41F 5962-00

41F 214412-00

**ORDER GRANTING MOTION TO AMEND
AND SETTING FILING DEADLINE**

BACKGROUND

The Water Court decreed claims 41F 5962-00 and 41F 214412-00 in the Preliminary Decree for the Madison River (Basin 41F) issued July 26, 2023. The water sources for these claims are Moran Creek and unnamed tributaries of Moran Creek. Moran Creek is a natural carrier for water released from storage from Axolotl Lakes and Twin Lakes, which consist of three lakes with impoundments in the Gravelly Range in Madison County.

On May 28, 2025, the Court consolidated claims 41F 5962-00 and 41F 214412-00, which had previously been addressed in an “Order Amending Claim 41F 5962-00 and Order Dismissing Claim 41F 214412-00” from January 3, 2014 in case 41F-A4. (Doc. 1.00). The Alton Living Trust (“Alton”) owns the claims and filed objections to the claims. Alton objected to the claims on the basis that the Preliminary Decree abstract for claim 41 5962-00 does not match what the Court decreed in the 41F-A4 Order. In

the objection to claim 41F 214412-00, Alton requests that “[d]ismissal of this claim should not be implemented until the amendments to claim 41F 5962-00 requested and decreed in Case 41F-A4 are properly implemented in the Basin 41F Preliminary Decree.” The United States of American, Bureau of Reclamation (“Reclamation”) also objected to claim 41F 5962-00 asserting non-perfection, abandonment, and other issues.

On June 16, 2025, the Court held a Status Conference and put the case on a settlement track with a September 16, 2025 deadline for filing settlement documents or status reports. (Doc. 2.00). The case was delayed due to a lapse in appropriations to the federal government, and the settlement deadline was extended to December 31, 2025.

On December 23, 2025, Alton filed a Motion to Amend (“Motion”) claim 41F 5962-00. The Motion seeks to 1) reinstate a point of diversion in the NESWNE of Section 17, Township 7S, Range 2W, for the dam for the Axolotl Lake Reservoir, and 2) add two addition secondary points of diversion located in the SWSNW of Section 31, Township 6S, Range 1W, and the Government Lot 3 of Section 1, Township 7S, Range 2W.

DISCUSSION

Motions to amend are authorized under Section 85-2-233(6), MCA and Rule 10, W.R.Adj.R. When a party seeks to amend an element of their own water right, the party must provide sufficient evidence to prove by a preponderance of the evidence that the modification overcomes the prima facie status of the claim. Rule 19, W.R.Adj.R.; *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558. Here, the Alton’s Motion is in response to their timely filed objection to claim 41F 5962-00.

Claim 41F 5962-00 is a sprinkler/flood irrigation claim from Moran Creek and an unnamed tributary of Moran Creek. The claim has the following primary and secondary points 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		NWSWSE	8	7S	2W	MADISON
Source Name:		UNNAMED TRIBUTARY OF MORAN CREEK				
*Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		DAM				

2	NWNWSW	9	7S	2W	MADISON
*Source Name:	UNNAMED TRIBUTARY OF MORAN CREEK				
*Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	DAM				
3	NWNWSW	9	7S	2W	MADISON
*Source Name:	UNNAMED TRIBUTARY OF MORAN CREEK				
*Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	DAM				
4 - SECONDARY	SEWSE	36	6S	2W	MADISON
Source Name:	MORAN CREEK				
*Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	HEADGATE				
Ditch Name:	THEXTON DITCH				
5 - SECONDARY	3	31	6S	1W	MADISON
Source Name:	MORAN CREEK				
*Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	HEADGATE				
Ditch Name:	THEXTON DITCH				
	MORAN CREEK IS USED AS A NATURAL CARRIER TO CONVEY WATER RELEASED FROM AXOLOTL LAKE, RESERVOIR LAKE AND TWIN LAKE EAST, TO SECONDARY POINTS OF DIVERSION IN THE SENWSE SEC 36, T6S, R2W, AND NWNWSW SEC 31, T6S, R1W MADISON COUNTY.				

Axolotl Lake Point of Diversion

Alton’s Motion asserts, pursuant to their timely objection, that the point of diversion in the NESWNE of Section 17, Township 7S, Range 2W for the dam for the Axolotl Lake Reservoir should be reinstated. The Motion states that the Montana Department of Natural Resource and Conservation (“DNRC”) inadvertently listed the point of diversion for the Twin Lake East Reservoir in the NWNWSW of Section 9, Township 7S, Range 2W twice during the reexamination of claim 41F 5962-00 prior to the issuance of the 41F Preliminary Decree. In listing the Twin Lake East point of diversion twice, the DNRC mistakenly omitted the dam for the Axolotl Lake Reservoir in the NESWNE of Section 17, Township 7S, Range 2W.

Evidence from the claim file for claim 41F 5962-00 suggests that the point of diversion in the NESWNE of Section 17, Township 7S, Range 2W was addressed in a 2004 “Motion to Amend Temporary Preliminary Decree” (“2004 Motion”). The 2004 Motion provided evidence in the form of an affidavit from a former owner of the water

right, a map showing exactly where the point of diversion was located, and evidence of compliance with the notice period articulated under Rule 10, W.R.Adj.R. The NESWNE of Section 17 point of diversion was then added to claim 41F 5962-00.

Additionally, the Motion includes evidence from Kyle Mace of WGM Group Inc., who completed an examination of the historical points of diversion and use of claim 41F 5962-00. Mace concluded “the DNRC had improperly eliminated a primary point of diversion for the Axolotl lake reservoir in the NESWNE of Section 17, T7S, R2W.”

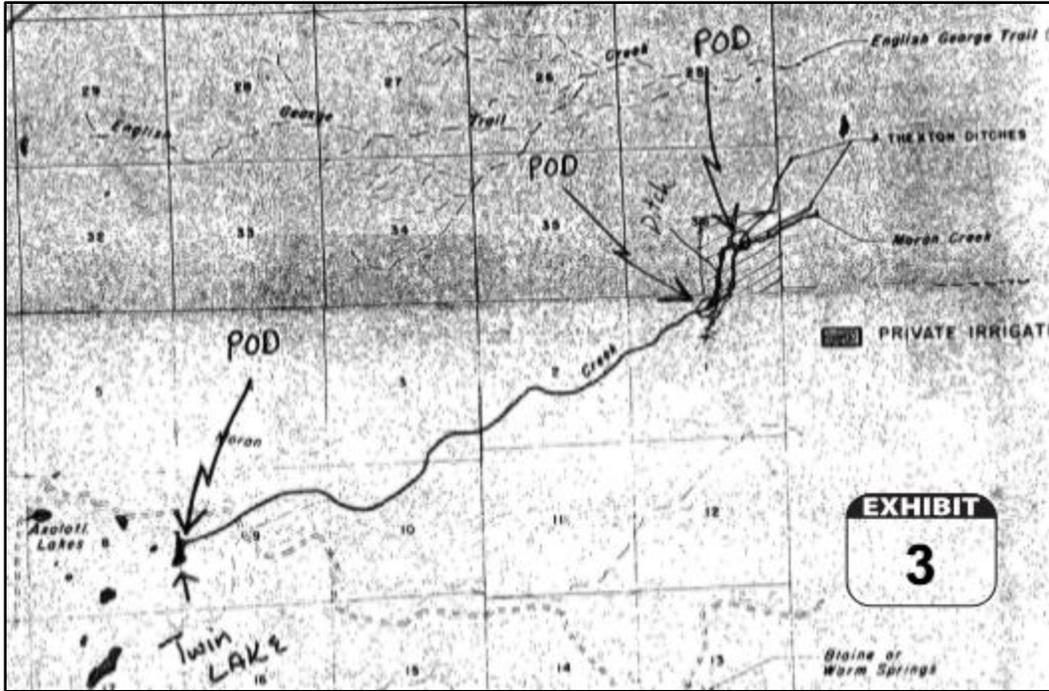
The Court grants Alton’s request to reinstate the following point of diversion in place of one the duplicated Twin Lakes East Reservoir diversion:

	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
		NESWNE	17	7S	2W	MADISON
Source Name:	UNNAMED TRIBUTARY OF MORAN CREEK					
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	DAM					

Additional Secondary Points of Diversion

Alton’s Motion also contends that two additional secondary points of diversion¹ should be added to claim 41F 5962-00 in the SWNENW of Section 31, Township 6S, Range 1W, and Government Lot 3 of Section 1, Township 7S, Range 2W. The Motion includes evidence of the two additional secondary points of diversion on Moran Creek that were discovered as a result of Mace’s review of historical aerial photographs—also found in the 41F 5962-00 claim file—of the Axolotl Lakes reservoir system and conveyance systems in the Moran Creek drainage:

¹ The DNRC claim examination rules, as incorporated into the Water Court’s adjudication rules, does not define the term “secondary point of diversion.” DNRC’s examination manual describes a secondary point of diversion as “a diversion that “moves or controls water after the initial diversion and is within the system either en route to the POU or on the POU itself. It does not take new water from the claimed source.” DNRC Claim Examination Manual, at 301 (May 2013). Diversions from a stream course used as a natural conveyance is an example of a secondary point of diversion. To avoid confusion administering the natural carrier source, the secondary point of diversion should be noted on the abstract.



The two additional secondary points of diversion are for water originating in Twin Lakes, which drains into Moran Creek. Moran Creek then naturally carries water to the two secondary points of diversion where it is removed for use on Alton property. Based upon his findings, Mace opines the two secondary points of diversion should be added to the claim abstract. The Court confirms the two secondary points of diversion based upon Mace’s analysis and the presence of the points of diversion in the historical record for 41F 5962-00. The Court grants the additional secondary points of diversion as follows:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
6 - SECONDARY Source Name: Period of Diversion: Diversion Means: Ditch Name:		SWSNW	31	6S	1W	MADISON
7 - SECONDARY Source Name: Period of Diversion: Diversion Means: Ditch Name:	3		1	7S	2W	MADISON

CONCLUSION

The evidence supports Alton's Motion for claim 41F 5962-00 as detailed by this Order. Granting the motion resolves the objection to the claims. Based on Alton's Motion, it appears that there is no remaining objection to the dismissal of claim 41F 214412-00. However, as it is not entirely clear whether the granting of the motion resolves all the United States' objections, this Order sets a filing deadline for the United States.

ORDER

THEREFORE, based upon the filing of this Motion pursuant to a timely objection from Alton, and for good cause shown, the Court ORDERS Alton's Motion to Amend is GRANTED. Not later than **February 12, 2026**, the United States shall file a statement as to whether the granting of the motion resolves its objections. If nothing is filed, the Court will conclude the objections are resolved by the terms of this Order and the dismissal of claim 41F 214412-00 will be confirmed in a post-decree abstract.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail:

Alexa Penalosa
USDOJ ENRD Natural Resources
alexa.penalosa@usdoj.gov
montanabasins.enrd@usdoj.gov

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