

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

* * * * *

CLAIMANTS: Careless Creek One LLC; Dolores Struckman

OBJECTOR: Careless Creek One LLC

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

CASE 41F-0217-R-2025

41F 39162-00

41F 39163-00

41F 39167-00

41F 42421-00

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 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

The captioned claims received self-objections from co-claimant Careless Creek One LLC (“Careless Creek”) to the maximum acres irrigated and place of use elements and possible abandonment or nonperfection of irrigation claim 41F 39162-00; the flow rate, volume, maximum acres irrigated, and place of use elements, the flow rate issue remark, and possible abandonment or nonperfection of irrigation claim 41F 39163-00; the possible abandonment or nonperfection of stock claim 41F 39167-00; and the maximum acres irrigated and place of use elements for irrigation claim 41F 42421-00.

The United States, DOI Bureau of Reclamation (“BOR”) filed a notice of intent to appear for irrigation claims 41F 39162-00, 41F 39163-00, and 41F 42421-00.

Irrigation claim 41F 39163-00 and stock claim 41F 39167-00 received issue remarks. Issue remarks often result from Department of Natural Resources and Conservation (“DNRC”) claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims.

Montana law requires the Water Court to resolve issue remarks, objections, and notices of intent to appear.

Issues

1. Are Careless Creek’s objections to each claim resolved?
2. Are the issue remarks on each claim resolved?
3. Are the BOR’s notices of intent to appear for irrigation claims 41F 39162-00, 41F 39163-00, and 41F 42421-00 resolved?

Findings of fact

1. The historical maximum acres irrigated and place of use for irrigation claims 41F 39162-00, 41F 39163-00, and 41F 42421-00 should be reduced to 16.00 acres in the SWSE of Section 33, Township 5 South, Range 1 West, Madison County.
2. Stock claim 41F 39167-00 should be dismissed from the adjudication.

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. The 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.

Analysis

Issues 1-3 – Objection, issue remark, and notice of intent to appear resolution

Careless Creek asserts the places of use in the NESE and SESE of Section 33, Township 5 South, Range 1 West, Madison County should be removed from irrigation

claims 41F 39162-00, 41F 39163-00, and 41F 42421-00. Careless Creek's objection to each claim states, "There is no functioning infrastructure to convey water over to this portion of the place of use," and that each claim "should be reduced to 16 acres in the SWSE of Section 33." Co-claimant Dolores Struckman did not file any comment by the court-ordered deadline concerning Careless Creek's proposed modifications, indicating Ms. Struckman's agreement with Careless Creek's proposed modifications.

Irrigation claim 41F 39163-00 appeared in the Preliminary Decree with the following issue remarks:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 21.00 GPM.

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.

Careless Creek asserts the flow rate identified by statement of claim 41F 39163-00 is historically accurate. Information in claim file 41F 39163-00 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 ditch name issue remark provided the opportunity for claimants and other water users to object to the claim. No one, including Careless Creek, objected to the ditch name identified by claim 41F 39163-00.

Careless Creek asserts that stock claim 41F 39167-00 should be dismissed. Careless Creek's objection to the claim states, "41F 39167 00 has been abandoned. No water exists at the POD location and a pipeline has not been located. There is no known use of this water right." Co-claimant Dolores Struckman did not file any comment by the court-ordered deadline concerning Careless Creek's proposed dismissal of the claim, indicating Ms. Struckman's agreement with Careless Creek's proposed dismissal of stock claim 41F 39167-00.

Conclusions of law

The modification to the maximum acres irrigated and place of use for irrigation claims 41F 39162-00, 41F 39163-00, and 41F 42421-00 are reductions within the parameters of the prima facie statements of claim. The record before the court justifies the modifications proposed by Careless Creek's objections.

The flow rate issue remark is not supported by evidence sufficient to overcome the prima facie proof afforded the flow rate for irrigation claim 41F 39163-00. The flow rate issue remark does not raise an issue that requires resolution by the court.

The modifications to irrigation claims 41F 39162-00, 41F 39163-00, and 41F 42421-00 and removal of the flow rate issue remark from claim 41F 39163-00 resolve Careless Creek's objections to the claims and resolve the BOR's notices of intent to appear for the claims.

The ditch name issue remark appearing on irrigation claim 41F 39163-00 served its notice purpose.

Stock claim 41F 39167-00 should be dismissed as proposed by Careless Creek's objection. The dismissal of stock claim 41F 39167-00 resolves Careless Creek's objection to the claim and moots the issue remark appearing on the claim.

Recommendations

Irrigation claims 41F 39162-00, 41F 39163-00, and 41F 42421-00 should be modified as follows to accurately reflect historical use.

<u>MAXIMUM ACRES:</u>		84.00	16.00				
<u>PLACE OF USE:</u>							
	<u>ACRES</u>	<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	40.00		NESE	33	5S	1W	MADISON
	28.00		SESE	33	5S	1W	MADISON
	16.00		SWSE	33	5S	1W	MADISON
TOTAL:	16.00	84.00					

The issue remarks should be removed from claim abstract 41F 39163-00.

Stock claim 41F 39167-00 should be dismissed.

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

Careless Creek One LLC
145 Paseo Aragon
Santa Fe, NM 87506-2148

Dolores Struckman
626 Red Barn Dr
Belgrade, MT 59714-7206

Service Via Electronic Mail

Alexa Penalosa
US Dept of Justice, ENRD-NRS
Alexa.penalosa@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV
(Atty for: United States, DOI Bureau of Reclamation)

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

Water Right Number: 41F 39162-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DOLORES STRUCKMAN
626 RED BARN DR
BELGRADE, MT 59714-7206

CARELESS CREEK ONE LLC
145 PASEO ARAGON
SANTA FE, NM 87506-2148

Priority Date: MAY 24, 1971

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 3.18 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: MOORES 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		SWSWSE	33	5S	1W	MADISON

Period of Diversion: MAY 1 TO OCTOBER 15

Diversion Means: PUMP

Period of Use: MAY 1 TO OCTOBER 15

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	16.00		SWSE	33	5S	1W	MADISON

Total: 16.00

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.

39161-00 39162-00 39163-00 42421-00

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

Water Right Number: 41F 39163-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DOLORES STRUCKMAN
626 RED BARN DR
BELGRADE, MT 59714-7206

CARELESS CREEK ONE LLC
145 PASEO ARAGON
SANTA FE, NM 87506-2148

Priority Date: APRIL 30, 1883

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 4.00 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: MADISON RIVER

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		SENWSE	4	6S	1W	MADISON
Period of Diversion:	MAY 1 TO OCTOBER 15					
Diversion Means:	HEADGATE					
Ditch Name:	ENNIS SHRIVER DITCH					
Period of Use:	MAY 1 TO OCTOBER 15					

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	16.00		SWSE	33	5S	1W	MADISON
Total:	16.00						

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.

39161-00 39162-00 39163-00 42421-00

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

Water Right Number: 41F 39167-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Owners: DOLORES STRUCKMAN
626 RED BARN DR
BELGRADE, MT 59714-7206

CARELESS CREEK ONE LLC
145 PASEO ARAGON
SANTA FE, NM 87506-2148

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: SPRING, UNNAMED TRIBUTARY OF MOORES CREEK

Source Type: GROUNDWATER

Source Name: SPRING, GROUNDWATER

Source Type: GROUNDWATER

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 42421-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CARELESS CREEK ONE LLC
145 PASEO ARAGON
SANTA FE, NM 87506-2148

Priority Date: AUGUST 10, 1908

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 1.00 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: SPRING, UNNAMED TRIBUTARY OF MOORES CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWSWSE	33	5S	1W	MADISON

Period of Diversion: MAY 1 TO OCTOBER 15

Diversion Means: PUMP

Period of Use: MAY 1 TO OCTOBER 15

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	16.00		SWSE	33	5S	1W	MADISON
Total:	16.00						

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.

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