

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

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

CLAIMANT: Montana Dept. of Fish, Wildlife & Parks

CASE 41F-0504-R-2025

41F 30144189

41F 30144190

41F 30144191

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 stock claims appeared in the Preliminary Decree with the following issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41F DECREE ISSUED 25-JUL-84.

THE PLACE OF USE LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

Stock claim 41F 30144191 appeared in the Preliminary Decree with the following additional issue remark:

THIS CLAIM APPEARS TO BE CLAIMING FIVE SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination.

Montana law requires the Water Court to resolve issue remarks. Information before the court resolved the issue remark noting the claims were not included in the previous decree. Information before the court did not resolve the other issue remarks. Pursuant to § 85-2-248(3), MCA the court contacted claimant for evidence resolving the point of diversion and place of use issue remarks on each claim and the issue remark noting multiple sources for claim 41F 30144191 and questioning whether more than water right was claimed.

Montana Dept. of Fish Wildlife & Parks (“FWP”), by and through its counsel of record Alexander Scolavino, filed evidence resolving the issue remarks on the claims. Mr. Scolavino’s filing is considered his notice of appearance on behalf of FWP. The service list for this case should be updated accordingly.

Issues

1. What is the historical point of diversion and place of use for each stock claim?
2. Are the issue remarks on each claim resolved?

Findings of fact

1. The historical point of diversion and place of use for stock claim 41F 30144189 should be the NWSWNE, SWSWNE, SESENE, NENESW, and NWNESW of Section 35, Township 7 South, Range 1 East, Madison County.

2. The historical point of diversion and place of use for stock claim 41F 30144190 should be the SWNWSE and SENESW of Section 35, Township 7 South, Range 1 East, Madison County.

3. The historical point of diversion and place of use for stock claim 41F 30144191 should be Government Lot 4, NESWSE, SESWSE, and SWSWSE of Section 35, Township 7 South, Range 1 East, Madison County.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-222, 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. 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.

4. 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 and 2 – point of diversion, place of use, and issue remark resolution

Each statement of claim identified multiple legal land descriptions where the spring source for each claim began and ran through Section 35. The aerial photo attached to and in support of each statement of claim did not detail exactly where the source started and ran through Section 35, instead depicting squares of Section 35, Township 7 South, Range 1 East, Madison County where the source was generally located. Seemingly, this resulted in DNRC attempting to consolidate the points of diversion into one legal land description for claims 41F 30144189 and 41F 30144190 and the addition of the point of diversion and place of use issue remarks to each claim.

FWP provided the Affidavit of Stephen Begley, Water Resource Specialist and aerial photos for each claim to support the resolution of the point of diversion and place of use issue remarks. The Begley Affidavit includes the claimed, examined, and proposed modified point of diversion and place of use for each claim. Mr. Begley attests that the modifications made by DNRC during claims examination were not historically accurate. Mr. Begley reviewed each claim and proposed modifications that would reflect the historical use of each claim based upon the location of each spring and its drainage on FWP property. The aerial photos attached to the Begley Affidavit match the aerial photos attached to each statement of claim but identify with detail the location of each claimed spring and its drainage on FWP property, matching the legal land descriptions provided by Mr. Begley. Mr. Begley proposed slightly modified legal land descriptions from those identified by prima facie statements of claim 41F 30144189 and 41F 30144190 and a reduced legal land description from that identified by prima facie statement of claim 41F 30144191 to better reflect the location of each point of diversion and place of use for these direct from source stock claims.

FWP's statement and the Begley Affidavit and its attachments may be viewed on

the court's case management system, FullCourt Enterprise, at document sequence 2.00.

Stock claim 41F 30144191 appeared in the Preliminary Decree with the following issue remark concerning source.

THIS CLAIM APPEARS TO BE CLAIMING FIVE SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

Statement of claim 41F 30144191 identifies its source as Other Bear Creek Spring 3. Mr. Begley attests DNRC "may have misidentified that the source of this water right also included a ditch that runs" through the legal land description resulting in the identification of multiple sources. Mr. Begley attests this water right diverts water from the spring in Government Lot 4 and the spring's drainage to the southwest until it "intercepts an agricultural field in the SWSWSW Quarter or [sic] Section 35." The aerial photo attached to the statement of claim and the aerial photo provided by Mr. Begley depict the description of the sources provided by Mr. Begley. FWP correctly filed one statement of claim for this appropriation. DNRC placed the issue remark on the abstract in error.

The claims appeared in the Preliminary Decree with the following issue remark:
THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41F DECREE ISSUED 07/25/1984.

Water users were given the opportunity to review the claims and file an objection. The deadline to file objections passed. No water users filed objections to the claims.

Conclusions of law

The evidence provided by FWP overcomes, by a preponderance of evidence, the prima facie proof afforded the point of diversion and place of use for claims 41F 30144189 and 41F 30144190. The point of diversion and place of use issue remarks on each claim are resolved.

The proposed modification to the point of diversion and place of use are reductions within the parameters of statement of claim 41F 30144191 and resolve the point of diversion and place of use issue remarks on the claim. There is no burden of proof for FWP to meet.

The issue remark on claim 41F 30144191 noting five sources and the possibility of

multiple water rights appears on the abstract in error.

The issue remark on each claim noting the lack of the claim's inclusion in the previous Basin 41F decree served its notice purpose.

Recommendations

Stock claim 41F 30144189 should be modified as follows to accurately reflect historical use.

POINT OF DIVERSION AND PLACE OF USE:

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	W2SWNE	35	7S	1E	MADISON
	NWSWNE	35	7S	1E	MADISON
	SWSWNE	35	7S	1E	MADISON
	SESENE	35	7S	1E	MADISON
	NENESW	35	7S	1E	MADISON
	NWNESW	35	7S	1E	MADISON

Stock claim 41F 30144190 should be modified as follows to accurately reflect historical use.

POINT OF DIVERSION AND PLACE OF USE:

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	W2NWSE	35	7S	1E	MADISON
	SWNWSE	35	7S	1E	MADISON
	SENESE	35	7S	1E	MADISON

Stock claim 41F 30144191 should be modified as follows to accurately reflect historical use.

POINT OF DIVERSION AND PLACE OF USE:

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
4		35	7S	1E	MADISON
	NESWSE	35	7S	1E	MADISON
	NWSWSE	35	7S	1E	MADISON
	SESWSE	35	7S	1E	MADISON
	SWSWSE	35	7S	1E	MADISON

The issue remarks should be removed from the claim abstracts.

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:

(Last Order)
Montana Department of Fish, Wildlife and Parks
PO Box 200701
Helena, MT 59620-0701

Service via Electronic Mail:

Alexander R. Scolavino III
Agency Legal Counsel
Alexander.Scolavino@mt.gov
Audrey.Kelly@mt.gov
(Atty for: Montana Dept. of Fish Wildlife & Parks)

****Note: Service List Updated 7-29-2026****

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

Water Right Number: 41F 30144189 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: MONTANA, STATE OF DEPT OF FISH WILDLIFE & PARKS
PO BOX 200701
HELENA, MT 59620-0701

Priority Date: DECEMBER 14, 1916

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:** SPRING, UNNAMED TRIBUTARY OF BEAR CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS BEAR CREEK SPRING 1

***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		NWSWNE	35	7S	1E	MADISON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		SWSWNE	35	7S	1E	MADISON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		SESENW	35	7S	1E	MADISON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		NENESW	35	7S	1E	MADISON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		NWNESW	35	7S	1E	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			NWSWNE	35	7S	1E	MADISON
2			SWSWNE	35	7S	1E	MADISON
3			SESENW	35	7S	1E	MADISON
4			NENESW	35	7S	1E	MADISON
5			NWNESW	35	7S	1E	MADISON

Remarks:

FWP FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES MT FWP: OTH BEAR CR SPRING 1. ADDITIONAL INFORMATION PROVIDED: NORTHERN PACIFIC PATENT 558817.

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

Water Right Number: 41F 30144190 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: MONTANA, STATE OF DEPT OF FISH WILDLIFE & PARKS
PO BOX 200701
HELENA, MT 59620-0701

Priority Date: DECEMBER 14, 1916

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:** SPRING, UNNAMED TRIBUTARY OF BEAR 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		SWNWSE	35	7S	1E	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		SENESEW	35	7S	1E	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			SWNWSE	35	7S	1E	MADISON
2			SENESEW	35	7S	1E	MADISON

Remarks:

FWP FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES MT FWP: OTH BEAR CR SPRING 2. ADDITIONAL INFORMATION PROVIDED: NORTHERN PACIFIC PATENT 558817.

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

Water Right Number: 41F 30144191 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: MONTANA, STATE OF DEPT OF FISH WILDLIFE & PARKS
PO BOX 200701
HELENA, MT 59620-0701

Priority Date: DECEMBER 14, 1916

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:** UNNAMED TRIBUTARY OF BEAR CREEK

Source Type: SURFACE WATER

***Source Name:** SPRING, UNNAMED TRIBUTARY OF BEAR CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	4		35	7S	1E	MADISON

***Source Name:** SPRING, UNNAMED TRIBUTARY OF BEAR CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		NESWSE	35	7S	1E	MADISON
---	--	--------	----	----	----	---------

Source Name: UNNAMED TRIBUTARY OF BEAR CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3		SESWSE	35	7S	1E	MADISON
---	--	--------	----	----	----	---------

Source Name: UNNAMED TRIBUTARY OF BEAR CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

4		SWSWSE	35	7S	1E	MADISON
---	--	--------	----	----	----	---------

Source Name: UNNAMED TRIBUTARY OF BEAR CREEK

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		4		35	7S	1E	MADISON
2			NESWSE	35	7S	1E	MADISON
3			SESWSE	35	7S	1E	MADISON
4			SWSWSE	35	7S	1E	MADISON

Remarks:

FWP FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES MT FWP: OTH BEAR CR SPRING 3. ADDITIONAL INFORMATION PROVIDED: NORTHERN PACIFIC PATENT 55817.