

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

CLAIMANT: Bring Em LLC

OBJECTOR: Bring Em LLC

NOTICE OF INTENT TO APPEAR: United States, DOI Bureau
of Reclamation; Valley
Garden Land & Cattle LLC

CASE 41F-0215-R-2025

41F 23770-00

41F 23771-00

41F 23773-00

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

Claimant Bring Em LLC filed objections¹ to all elements of the captioned claims. The United States, DOI Bureau of Reclamation (“BOR”) and Valley Garden Land & Cattle LLC (“Valley Garden”) filed notices of intent to appear for irrigation claim 41F 23770-00 and stock claim 41F 23773-00.

Irrigation claims 41F 23770-00 and 41F 23771-00 appeared in the Preliminary Decree with the following issue remarks:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SWNWNE SEC 35 TWP 4S RGE 2W MADISON COUNTY.

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.

Stock claim 41F 23773-00 appeared in the Preliminary Decree with the following issue remark:

POINT OF DIVERSION AND DITCH NAME WERE 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. If claims examination cannot confirm an element of a claim based upon historical resources, or water right claim examination rules require identification of an issue, or a Water Court order requires identification of an issue, an issue remark is added to the claim. An issue remark may also simply provide notice to water users concerning a claim. Montana law requires the Water Court to resolve issue remarks.

On March 24, 2026, Bring Em LLC filed a proposed resolution of its objections and issue remarks appearing on its claims. An order then provided a filing deadline for the BOR and Valley Garden to file a statement concerning whether their concerns were

¹ The court dismissed the objection to claim 41F 23771-00 because the objection was to a groundwater certificate and not statement of claim 41F 23771-00.

addressed by Bring Em LLC's proposed resolution. Both BOR and Valley Garden filed statements indicating their concerns were addressed by the proposed resolution.

Issues

1. What is the historically accurate point of diversion for irrigation claims 41F 23770-00 and 41F 23771-00?
2. Are the issue remarks on the claims resolved?
3. Are the objections and notices of intent to appear resolved?

Finding of fact

A preponderance of evidence establishes the historically accurate point of diversion for irrigation claims 41F 23770-00 and 41F 23771-00 is the SWNWNE Section 35, 4 South, 2 West, Madison County.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, 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. 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 1-3 – point of diversion, and issue remark, objection, and notice of intent to appear resolution

Bring Em LLC explained, “there was some confusion around the correct legal land description for the historical POD [point of diversion], the Schoenberger Ditch...According to the 1965 Madison County Water Resource Survey (“WRS”), the “Shoenberger” Ditch had its headgate off of South Meadow Creek in the SWNWNE of Section 35.” (See Ex. A) This is the standardized legal land description for the point of diversion identified by the DNRC for the Schoenberger Ditch and identified by the issue remark on irrigation claims 41F 23770-00 and 41F 23771-00, and the point of diversion identified by stock claim 41F 23773-00. Bring Em LLC’s statement confirmed the historical accuracy of the point of diversion identified by the issue remark on claims 41F 23770-00 and 41F 23771-00 and by the Preliminary Decree abstract for claim 41F 23773-00. Bring Em LLC’s proposed resolution and its attachments may be viewed on the court’s case management system, FullCourt Enterprise, at document sequence 7.00.

Each of the captioned claims received an issue remark providing notice to water users that elements were modified by DNRC during reexamination. Water users were given the opportunity to review the claims and file an objection. The only objections filed to the claims were resolved by these case proceedings.

Conclusions of law

The point of diversion issue remark, the information resulting in the issue remark, and Bring Em LLC’s agreement with the issue remark overcomes, by a preponderance of evidence, the prima facie proof afforded the point of diversion for claims 41F 23770-00 and 41F 23771-00. The point of diversion issue remark appearing on claims 41F 23770-00 and 41F 23771-00 is resolved.

The notice issue remark on each claim served its purpose.

The modified point of diversion for claim 41F 23770-00, resolution of the point of diversion issue remark on claim 41F 23770-00, and removal of the notice issue remark on claim 41F 23773-00 resolves the concerns of notice of intent to appear parties the BOR and Valley Garden for claims 41F 23770-00 and 41F 23773-00, and resolves Bring Em LLC's self-objections to the claims.

Recommendations

Irrigation claims 41F 23770-00 and 41F 23771-00 should be modified as follows to accurately reflect historical use.

POINT OF DIVERSION:

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SWNWNE	NENENW	35	4S	2W	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 Electronic Mail:

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

Water Right Number: 41F 23770-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: BRING EM LLC
PO BOX 434
MCALLISTER, MT 59740-0435

Priority Date: JUNE 1, 1887

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.75 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: 210.00

Source Name: SOUTH MEADOW 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		SWNWNE	35	4S	2W	MADISON

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: SCHOENBERGER DITCH

Period of Use: APRIL 15 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	30.00		S2SE	36	4S	2W	MADISON
2	40.00		NWNW	6	5S	1W	MADISON
3	100.00		SW	6	5S	1W	MADISON
4	40.00		S2SE	6	5S	1W	MADISON

Total: 210.00

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.

23769-00	23770-00	23771-00	23772-00	37063-00	37064-00
37065-00	132280-00	132281-00			

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

23770-00 23773-00

AUTHORIZATION TO CHANGE THE POINT OF DIVERSION COMPLETED 10/23/1990. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE. SEE 41F 23770-00.

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

Water Right Number: 41F 23771-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: BRING EM LLC
PO BOX 434
MCALLISTER, MT 59740-0435

Priority Date: JUNE 1, 1909

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.38 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: 210.00

Source Name: SOUTH MEADOW CREEK

Source Type: SURFACE WATER

THIS RIGHT IS LIMITED TO HIGH OR FLOOD WATERS OF SOUTH MEADOW CREEK.

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		SWNWNE	35	4S	2W	MADISON

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: SCHOENBERGER DITCH

Period of Use: APRIL 15 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	30.00		S2SE	36	4S	2W	MADISON
2	40.00		NWNW	6	5S	1W	MADISON
3	100.00		SW	6	5S	1W	MADISON
4	40.00		S2SE	6	5S	1W	MADISON
Total:	210.00						

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.

23769-00	23770-00	23771-00	23772-00	37063-00	37064-00
37065-00	132280-00	132281-00			

AUTHORIZATION TO CHANGE THE POINT OF DIVERSION COMPLETED 10/23/1990. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE. SEE 41F 23770-00.

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

Water Right Number: 41F 23773-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: BRING EM LLC
PO BOX 434
MCALLISTER, MT 59740-0435

Priority Date: JUNE 1, 1887

Type of Historical Right: DECREED

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: SOUTH MEADOW 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		SWNWNE	35	4S	2W	MADISON

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: SCHOENBERGER DITCH

Period of Use: MAY 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			S2	36	4S	2W	MADISON
2			E2	1	5S	2W	MADISON
3			NWNW	6	5S	1W	MADISON
4			S2	6	5S	1W	MADISON

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

23770-00 23773-00

AUTHORIZATION TO CHANGE THE POINT OF DIVERSION COMPLETED 10/23/1990. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE. SEE 41F 23770-00.