

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

CLAIMANTS: James M. Guyette; Gail L. Downes; Jack C. Downes; Donald P. Neu; Jeanette L. Neu; Darold G. Rollman; Patricia A. Rollman; Ronan Telephone Company Employee Profit Sharing; C&J Wilson Trust

CASE 41F-0240-R-2026
41F 7399-00
41F 36684-00

NOTICE OF INTENT TO APPEAR: Bring Em LLC; Howard M. Sheridan; Valley Garden Land & Cattle, LLC

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

James M. Guyette irrigation claim 41F 7399-00 received the following issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 75 MINER'S INCHES DECREED IN CASE NO. 1183, MADISON COUNTY. 41F 7399-00, 41F 36684-00.

Gail L. Downes, Jack C. Downes, Jeanette L. Neu, Donald P. Neu, Patricia A. Rollman, Darold G. Rollman, Ronan Telephone Company Employee Profit Sharing, and C&J Wilson Trust irrigation claim 41F 36684-00 received the following issue remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 75 MINER'S INCHES DECREED IN CASE NO. 1183, MADISON COUNTY. 41F 7399-00, 41F 36684-00.

THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 1364.69 ACRE-FEET PER YEAR.

Issue remarks 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. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

Montana law requires the Water Court to resolve issue remarks. The issue remarks were not resolved through the objection process and while there appeared to be enough information in the claim files and before the court to resolve the issue remarks, pursuant to § 85-2-248(11), MCA the court may not resolve an issue remark modifying an element without agreement from the claimants. The court provided all parties the opportunity to comment upon the proposed resolution of the issue remarks. Bring Em LLC and Valley Garden Land & Cattle LLC each filed a statement agreeing with the proposed resolution of the issue remarks.

Issues

1. Did the decree exceeded issue remark on claims 41F 7399-00 and 41F 36684-00 appear on the abstracts in error?
2. Should the volume on claim 41F 36684-00 be reduced to the maximum feasible volume identified by the issue remark on the claim?
3. Are the concerns of the notice of intent to appear parties resolved?

Findings of fact

1. The decree exceeded issue remark on claims 41F 7399-00 and 41F 36684-00 appeared on the abstracts in error.
2. The volume for claim 41F 36684-00 should be reduced by a total of 4.31 AF - from 1,369.00 AF to the feasible volume of 1,364.69 AF.

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.

5. Judicial notice of facts may be taken from a source “whose accuracy cannot be reasonably questioned.” Rule 201, M.R.Ev.

Analysis

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

Judicial notice is taken of the Basin 41F Preliminary Decree source index. The source index may be viewed at: https://dnrc.mt.gov/_docs/water/adjudication/Decrees-2023/DECREE-41F-SRCINDX-23_0726.pdf. Upon review of the captioned claim files and the Basin 41F Preliminary Decree source index, there are no decree exceeded situations between any of the April 1, 1866 water rights decreed in Case No. 1183, *Morrison v. Higbee*, Fifth Judicial District, Madison County.

The attachments for statement of claim 41F 7399-00 include pages from the *Morrison v. Higbee* decree. Based on the information noted by claimant at the time of filing the statement of claim, claim 41F 7399-00 is based upon the Thomas Wilson April 1, 1866 40 MI (1.00 CFS) right for South Meadow Creek noted in Conclusion of Law I on p. 30 of the decree.

Likewise, the attachments for statement of claim 41F 36684-00 include a page from the *Morrison v. Higbee* decree. Based on the information noted by claimant at the time of filing the statement of claim, claim 41F 36684-00 is based upon the Thomas Wilson, April 1, 1866 75 MI (1.88 CFS) right for South Meadow Creek noted in Conclusion of Law I on p. 29 of the decree.

A deadline was set for claimants Gail L. Downes, Jack C. Downes, Jeanette L. Neu, Donald P. Neu, Patricia A. Rollman, Darold G. Rollman, Ronan Telephone Company Employee Profit Sharing, and C&J Wilson Trust to agree with feasible volume identified by the issue remark on irrigation claim 41F 36684-00 or to file evidence resolving the feasible volume issue remark appearing on claim 41F 36684-00. The order stated that if claimants did not file comments by the deadline, it would be deemed

claimants' agreement with the feasible volume proposed by the issue remark on claim 41F 36684-00 and that notice of intent to appear party for the claims would be provided time to comment on whether their concerns for the claims were resolved by the court's proposed resolution of the issue remarks on the claims. Claimants did not file comments by the deadline.

An order provided a filing deadline for notice of intent to appear parties Howard M. Sheridan, Bring Em LLC, and Valley Garden Land & Cattle LLC to file statements concerning whether their concerns were addressed by the proposed reduction to the feasible volume identified by the issue remark appearing on irrigation claim 41F 36684-00 and the removal of the decree exceeded issue remark on each claim as it was placed on the abstracts in error. The order stated that if Howard M. Sheridan, Bring Em LLC, and Valley Garden Land & Cattle LLC did not file a statement by the deadline, it would be deemed their agreement that their concerns were addressed by the proposed resolutions of the issue remarks on the captioned claims. Bring Em LLC and Valley Garden Land & Cattle LLC each filed a statement agreeing with the proposed resolution of the issue remarks. Howard M. Sheridan did not file comments by the deadline.

Conclusions of law

The decree exceeded issue remark on irrigation claims 41F 7399-00 and 41F 36684-00 appeared on the claim abstracts in error.

The volume issue remark appearing on irrigation claim 41F 36684-00, the information resulting in the issue remark, and claimants' agreement with the issue remark results in a reduction within the parameters of statement of claim 41F 36684-00. The volume issue remark is resolved.

The concerns of the notice of intent to appear parties are resolved.

Recommendations

Irrigation claim 41F 36684-00 should be modified as follows to accurately reflect historical use.

VOLUME: ~~1,369.00 AF~~ **1,364.69 AF**

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

Gail L. Downes
Jack C. Downes
Donald P. Neu
Jeanette L. Neu
Darold G. Rollman
Patricia A. Rollman
Ronan Telephone Company Employee Profit
Sharing
312 Main St SW
Ronan, MT 59864-2707

C&J Wilson Trust
PO Box 306
McAllister, MT 59740-0306

Howard M. Sheridan
842 Cal Cove Dr
Fort Myers, FL 33919

Service Via Electronic Mail

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(Atty for: Valley Garden Land & Cattle, LLC)

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

Water Right Number: 41F 7399-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: JAMES M GUYETTE
PO BOX 220
MCALLISTER, MT 59740-0220

Priority Date: APRIL 1, 1866

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.00 CFS

THE FLOW RATE FOR THIS CLAIM SHALL BE MEASURED AT OR ABOUT THE POINT WHERE THE CONVEYANCE DITCH CROSSES THE CLAIMANT'S PROPERTY LINE IN THE SWSWNE, S35, T4S, R2W, MADISON COUNTY. SEE THE CLAIM FILE OR WATER COURT CASE 41F 11-00 FOR MORE INFORMATION.

***Volume:** 300.00 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 215.00

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		NENENW	35	4S	2W	MADISON

***Period of Diversion:** APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: GORDON DITCH

WATER FROM GORDON DITCH IS CONVEYED THROUGH T. H. VINCENT DITCH TO THE PLACE OF USE.

***Period of Use:** APRIL 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	100.00		SW	36	4S	2W	MADISON
2	40.00		N2SE	35	4S	2W	MADISON
3	75.00		N2N2	1	5S	2W	MADISON
Total:	215.00						

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.

7392-00	7393-00	7394-00	7395-00	7396-00	7397-00
7398-00	7399-00	107146-00	214810-00	215027-00	215044-00

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

Water Right Number: 41F 36684-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners:

GAIL L DOWNES
312 MAIN ST SW
RONAN, MT 59864-2707

JACK C DOWNES
312 MAIN ST SW
RONAN, MT 59864-2707

DONALD P NEU
312 MAIN ST SW
RONAN, MT 59864-2707

JEANETTE L NEU
312 MAIN ST SW
RONAN, MT 59864-2707

DAROLD G ROLLMAN
312 MAIN ST SW
RONAN, MT 59864-2707

PATRICIA A ROLLMAN
312 MAIN ST SW
RONAN, MT 59864-2707

RONAN TELEPHONE COMPANY EMPLOYEE PROFIT SHARING
312 MAIN ST SW
RONAN, MT 59864-2707

WILSON C&J TRUST
PO BOX 306
MCALLISTER, MT 59740-0306

Priority Date: APRIL 1, 1866
Type of Historical Right: DECREED
Purpose (Use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: 1.88 CFS
Volume: 1,364.69 AC-FT
Climatic Area: 4 - MODERATELY LOW
Maximum Acres: 80.00
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		NWNWNW	33	4S	1W	MADISON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	HEADGATE					
Ditch Name:	NORTH WILSON DITCH					
2		NWNWNW	33	4S	1W	MADISON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	HEADGATE					
Ditch Name:	SOUTH WILSON DITCH					
3		NWNWNW	33	4S	1W	MADISON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	HEADGATE					
Ditch Name:	MCALLISTER DITCH					
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	70.00		E2NW	33	4S	1W	MADISON
2	10.00		NESW	33	4S	1W	MADISON
Total:	<u>80.00</u>						

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.

36684-00 36685-00 36686-00 36687-00 214815-00