

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

CLAIMANTS: Deshka Group LLC; Jack Creek Preserve
Foundation Inc.; Jumping Horse Stock Ranch
LLC; MB MT Acquisition LLC; MB West
Owner LLC; PCH Diamond J LLC; Zweig
Family Trust

CASE 41F-0260-R-2026
41F 54279-00

OBJECTOR: Kroenke Land & Livestock 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

Stock claim 41F 54279-00 received an objection from claimant Kroenke Land & Livestock LLC (“Kroenke”) to correct a clerical error in the place of use legal land description. An order provided claimants time to comment on the suggested clerical correction. The order stated that if no comments were filed by the deadline, it would be deemed claimants’ agreement with the suggested clerical correction. No claimants filed comments by the deadline.

Issues

Is Kroenke’s objection to stock claim 41F 54279-00 resolved?

Finding of fact

The historically accurate place of use in Section 18 for stock claim 41F 54279-00 is the S2 of Section 18, Township 6 South, Range 3 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 85-2-227, 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. A clerical mistake or mistake arising from omission or oversight may be corrected by the court at any time. Rule 60(a), M. R. Civ. P.

Analysis

Objection resolution

Kroenke's objection requests correction of a clerical error carried forward from the claim abstract issued by the court after Temporary Preliminary Decree proceedings. A Master's Report for claim 41F 54279-00, issued on March 22, 1989, modified the point of diversion and place of use for this livestock direct from source claim. The Master's Report was adopted (with amendments that don't pertain to the objection here) on March 25, 1991.

The information substantiating the modified point of diversion and place of use, the Master's Report, and the court's corrected (red marked) abstract all match - identifying a point of diversion and place of use in the S2 of Section 18, Township 6 South, Range **3 East**. The June 20, 1994 "Abstract of Water Right Claim as Modified by the Water Court" appears to be the first instance where the place of use error appears, identifying the place of use as the S2 of Section 18, Township 6 South, Range **1 East**. The place of use Range should be corrected to **3 East**, as noted by the Master's Report and the court's corrected (red marked) abstract.

Conclusions of law

Clerical errors may be corrected at any time. The requested correction to the place of use legal land description for stock claim 41F 54279-00 should be completed, thereby resolving Kroenke's objection to the claim.

Recommendations

Stock claim 41F 54279-00 should be modified as follows to accurately reflect historical use.

PLACE OF USE:

<u>ID</u>	<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
3		S2	18	6S	3E 4E	MADISON

A Post Decree Abstract of Water Right Claim accompanies 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:

Jack Creek Preserve Foundation Inc.
PO Box 3
Ennis, MT 59729

Jumping Horse Stock Ranch LLC
PO Box 1377
Ennis, MT 59729-1377

MB MT Acquisition LLC
1 Boston Pl
Boston, MA 02108-4407

MB West Owner LLC
% Crossharbor Capital Partners
1 Boston Pl Ste 2310
Boston, MA 02108

PCH Diamond J LLC
PO Box 708
Thomaston, GA 30286-0009

Zweig Family Trust
Ethan & Jennifer Zweig, Trustees
354 Albion Ave
Redwood City, CA 94062

Kroenke Land & Livestock LLC
% Deborah Stephenson, DMS Natural
Resources, LLC
602 S Ferguson Ave, Ste 2
Bozeman, MT 59718

Service Via Electronic Mail:

Andrew P. Suenram
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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MADISON RIVER
BASIN 41F

Water Right Number: 41F 54279-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

ZWEIG FAMILY TRUST
ETHAN & JENNIFER ZWEIG TTEES
354 ALBION AVE
REDWOOD CITY, CA 94062

DESHKA GROUP LLC
20872 ECKBO RD
LEESBURG, VA 20175-4650

JACK CREEK PRESERVE FOUNDATION INC
PO BOX 3
ENNIS, MT 59729

JUMPING HORSE STOCK RANCH LLC
PO BOX 1377
ENNIS, MT 59729-1377

MB MT ACQUISITION LLC
1 BOSTON PL
BOSTON, MA 02108-4407

MB WEST OWNER LLC
% CROSSHARBOR CAPITAL PARTNERS
ONE BOSTON PLACE STE 2310
BOSTON, MA 02108

PCH DIAMOND J LLC
PO BOX 708
THOMASTON, GA 30286-0009

Priority Date: MARCH 7, 1906

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 STOCK WATERING 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:** JACK 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		E2	34	5S	1E	MADISON
Period of Diversion:		JULY 1 TO OCTOBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
2		S2	36	5S	1E	MADISON
Period of Diversion:		JULY 1 TO OCTOBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
3		S2	4	6S	2E	MADISON
Period of Diversion:		JULY 1 TO OCTOBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
4			6	6S	2E	MADISON
Period of Diversion:		JULY 1 TO OCTOBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
5		N2	10	6S	2E	MADISON
Period of Diversion:		JULY 1 TO OCTOBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
6		NE	14	6S	2E	MADISON
Period of Diversion:		JULY 1 TO OCTOBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
7		S2	18	6S	3E	MADISON
Period of Diversion:		JULY 1 TO OCTOBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
Period of Use:		JULY 1 TO OCTOBER 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			E2	34	5S	1E	MADISON
2			S2	36	5S	1E	MADISON
3			S2	18	6S	3E	MADISON
4			S2	4	6S	2E	MADISON
5				6	6S	2E	MADISON
6			N2	10	6S	2E	MADISON
7			NE	14	6S	2E	MADISON

Remarks:

THE POINT OF DIVERSION AND PLACE OF USE IS ALL OF THE S2 OF SEC 36 TWP 05S RGE 01E MADISON COUNTY, EXCEPT FOR HES 187 AND 190.