

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: Kroenke Land & Livestock LLC

OBJECTOR: Kroenke Land & Livestock LLC

CASE 41F-0265-R-2026

41F 114886-00

41F 153955-00

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

Stock claim 41F 114886-00 appeared in the Preliminary Decree with the following issue remark:

POINT OF DIVERSION, MEANS OF DIVERSION, DITCH NAME AND SOURCE 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.

Stock claim 41F 153955-00 appeared in the Preliminary Decree with the following issue remark:

POINT OF DIVERSION NO. 18 APPEARS TO BE INCORRECT. POINT OF DIVERSION NO. 18 APPEARS TO BE W2SW SEC 23 TWP 6S RGE 1E MADISON COUNTY.

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

Stock claims 41F 114886-00 and 41F 153955-00 received self-objections from claimant Kroenke Land & Livestock LLC (“Kroenke”). Kroenke objected to the place of use identified by both claims and agreed with the point of diversion issue remark appearing on claim 41F 153955-00.

Montana law requires the Water Court to resolve issue remarks and objections.

Issues

1. Are Kroenke’s objections to each claim resolved?
2. Are the issue remarks resolved?

Findings of fact

1. The historically accurate place of use located in Section 20 for stock claim 41F 114886-00 should be refined to the SE and S2SW of Section 20, Township 6 South, Range 1 East, Madison County.

2. The point of diversion and place of use identified by stock claim 41F 153955-00 as the E2SW of Section 23 Township 6 South, Range 1 East, Madison County should be modified to the historically accurate point of diversion and place of use, the W2SW of Section 23 Township 6 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 85-2-227, 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. 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.

5. 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 - objection and issue remark resolution

Kroenke asserts the refined place of use identified by the map attached to and in support of stock statement of claim 41F 114886-00 is historically accurate.

The claim appeared in the Preliminary Decree with the following issue remark:

POINT OF DIVERSION, MEANS OF DIVERSION, DITCH NAME AND SOURCE 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.

Water users were given the opportunity to review the claim and file an objection.

The deadline to file objections expired. The only objection filed to the claims is resolved by these case proceedings.

Stock claim 41F 153955-00 appeared in the Preliminary Decree with the following issue remark:

POINT OF DIVERSION NO. 18 APPEARS TO BE INCORRECT. POINT OF DIVERSION NO. 18 APPEARS TO BE W2SW SEC 23 TWP 6S RGE 1E MADISON COUNTY.

Kroenke agrees with the point of diversion issue remark appearing on claim 41F 153955-00 and asserts the place of use for this livestock direct from source claim should match the place of use identified by the issue remark.

Conclusions of law

For stock claim 41F 114886-00, the modified place of use is a refinement within the parameters of the prima facie statement of claim and is supported by the map attached to and in support of the prima facie statement of claim. The record before the court justifies the modification proposed by Kroenke's objection and resolves its objection to claim 41F 114886-00.

For stock claim 41F 153955-00, Kroenke agreed with the modified point of diversion identified by the issue remark on the claim and asserted the same modification should be made to the place of use. Both modifications result in a refinement within the parameters of the prima facie statement of claim and are supported by the map attached to and in support of the prima facie statement of claim. The record before the court justifies the modifications proposed by Kroenke's objection and resolves its objection to claim 41F 153955-00.

The issue remark on each claim is resolved.

Recommendations

Stock claim 41F 114886-00 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>
4	SE	S2	20	6S	1E	MADISON
5		S2SW	20	6S	1E	MADISON

Stock claim 41F 153955-00 should be modified as follows to accurately reflect historical use.

POINT 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>
18	W2SW	E2SW	23	6S	1E	MADISON

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>
99	W2SW	E2SW	23	6S	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 Electronic Mail:

W. John Tietz
Hallee C. Frandsen
Browning Kaleczyc Berry & Hoven PC
john@bkbh.com
hallee@bkbh.com
wcfilings@bkbh.com
(Attys for: Kroenke Land & Livestock LLC)

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

Water Right Number: 41F 114886-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: KROENKE LAND & LIVESTOCK LLC
% DEBORAH STEPHENSON DMS NATURAL RESOURCES, LLC
602 S FERGUSON AVE, STE 2
BOZEMAN, MT 59718

Priority Date: FEBRUARY 15, 1944

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:** MCDEED 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		NENWSE	21	6S	1E	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: MANLEY DITCH

2		SE	21	6S	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			W2	21	6S	1E	MADISON
2			SE	21	6S	1E	MADISON
3			SWNE	21	6S	1E	MADISON
4			SE	20	6S	1E	MADISON
5			S2SW	20	6S	1E	MADISON

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

Water Right Number: 41F 153955-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: KROENKE LAND & LIVESTOCK LLC
% DEBORAH STEPHENSON DMS NATURAL RESOURCES, LLC
602 S FERGUSON AVE, STE 2
BOZEMAN, MT 59718

Priority Date: MAY 1, 1866

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 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:** CEDAR CREEK

Source Type: SURFACE WATER

POINTS OF DIVERSION NO. 1, 2, 16, 17, 20 AND 21 ARE ON AN UNNAMED TRIBUTARIES OF CEDAR 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		SE	14	6S	1E	MADISON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		SESW	14	6S	1E	MADISON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		S2SE	16	6S	1E	MADISON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		SWSWSE	18	6S	1E	MADISON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		S2SW	18	6S	1E	MADISON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
6		N2NE	19	6S	1E	MADISON

Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
7	N2NE	20	6S	1E	MADISON	
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
8	N2NWNW	20	6S	1E	MADISON	
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
9	N2NE	21	6S	1E	MADISON	
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
10	NWNENE	21	6S	1E	MADISON	
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	HEADGATE					
11	NENENW	21	6S	1E	MADISON	
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	HEADGATE					
12	NE	22	6S	1E	MADISON	
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
13	N2NW	22	6S	1E	MADISON	
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
14	NENENW	22	6S	1E	MADISON	
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	HEADGATE					
15	NWNWNW	22	6S	1E	MADISON	
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	HEADGATE					
16	S2NE	23	6S	1E	MADISON	
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
17	N2NW	23	6S	1E	MADISON	
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
18	W2SW	23	6S	1E	MADISON	
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
19	NE	26	6S	1E	MADISON	
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
20	E2NW	26	6S	1E	MADISON	

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

21 E2SW 26 6S 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			SWSE	33	5S	1E	MADISON
2			SWSW	33	5S	1E	MADISON
3			NWSW	34	5S	1E	MADISON
4			SWSW	34	5S	1E	MADISON
5			SENE	4	6S	1E	MADISON
6			SWNW	4	6S	1E	MADISON
7			NWSE	4	6S	1E	MADISON
8			SESE	4	6S	1E	MADISON
9			SWSE	4	6S	1E	MADISON
10			NESW	4	6S	1E	MADISON
11			SESW	4	6S	1E	MADISON
12			SWSW	4	6S	1E	MADISON
13		2		4	6S	1E	MADISON
14		3		4	6S	1E	MADISON
15		4		4	6S	1E	MADISON
16			SENE	5	6S	1E	MADISON
17			SWNE	5	6S	1E	MADISON
18			NESE	5	6S	1E	MADISON
19			SESE	5	6S	1E	MADISON
20		1		5	6S	1E	MADISON
21		2		5	6S	1E	MADISON
22			NENE	9	6S	1E	MADISON
23			NWNE	9	6S	1E	MADISON
24			SENE	9	6S	1E	MADISON
25			SWNE	9	6S	1E	MADISON
26			NENW	9	6S	1E	MADISON
27			NWNW	9	6S	1E	MADISON
28			SENE	9	6S	1E	MADISON
29			SWNW	9	6S	1E	MADISON
30			NESE	9	6S	1E	MADISON
31			NWSE	9	6S	1E	MADISON
32			SESE	9	6S	1E	MADISON
33			SWSE	9	6S	1E	MADISON
34			NESW	9	6S	1E	MADISON
35			SESW	9	6S	1E	MADISON
36			SWSW	9	6S	1E	MADISON
37			SESW	10	6S	1E	MADISON
38			SWSW	10	6S	1E	MADISON

39		SE	14	6S	1E	MADISON
40		SESW	14	6S	1E	MADISON
41		NENW	15	6S	1E	MADISON
42		NWNW	15	6S	1E	MADISON
43		SWNW	15	6S	1E	MADISON
44		SESW	15	6S	1E	MADISON
45		SWSW	15	6S	1E	MADISON
46		NENE	16	6S	1E	MADISON
47		NWNE	16	6S	1E	MADISON
48		SENE	16	6S	1E	MADISON
49		SWNE	16	6S	1E	MADISON
50		NWNW	16	6S	1E	MADISON
51		SWNW	16	6S	1E	MADISON
52		NESE	16	6S	1E	MADISON
53		NWSE	16	6S	1E	MADISON
54		SESE	16	6S	1E	MADISON
55		SWSE	16	6S	1E	MADISON
56		NWSW	16	6S	1E	MADISON
57		SESW	16	6S	1E	MADISON
58		SWSW	16	6S	1E	MADISON
59		NENE	17	6S	1E	MADISON
60		NWNE	17	6S	1E	MADISON
61		SENE	17	6S	1E	MADISON
62		SWNW	17	6S	1E	MADISON
63		NESE	17	6S	1E	MADISON
64		NWSE	17	6S	1E	MADISON
65		SESE	17	6S	1E	MADISON
66		SWSE	17	6S	1E	MADISON
67		NESW	17	6S	1E	MADISON
68		NWSW	17	6S	1E	MADISON
69		SESW	17	6S	1E	MADISON
70		SWSW	17	6S	1E	MADISON
71		NWNE	18	6S	1E	MADISON
72		SENE	18	6S	1E	MADISON
73		SWNE	18	6S	1E	MADISON
74		NENW	18	6S	1E	MADISON
75		SENW	18	6S	1E	MADISON
76		NESE	18	6S	1E	MADISON
77		NWSE	18	6S	1E	MADISON
78		SESE	18	6S	1E	MADISON
79		SWSWSE	18	6S	1E	MADISON
80		NESW	18	6S	1E	MADISON
81		SESW	18	6S	1E	MADISON
82	1		18	6S	1E	MADISON
83	2		18	6S	1E	MADISON
84	3		18	6S	1E	MADISON
85	4		18	6S	1E	MADISON

86	NENE	19	6S	1E	MADISON
87	NWNE	19	6S	1E	MADISON
88	NENW	19	6S	1E	MADISON
89	NENE	20	6S	1E	MADISON
90	NWNE	20	6S	1E	MADISON
91	NWNW	20	6S	1E	MADISON
92	NENE	21	6S	1E	MADISON
93	NWNE	21	6S	1E	MADISON
94	NE	22	6S	1E	MADISON
95	NENW	22	6S	1E	MADISON
96	NWNW	22	6S	1E	MADISON
97	S2N2	23	6S	1E	MADISON
98	N2NW	23	6S	1E	MADISON
99	W2SW	23	6S	1E	MADISON
100	NE	26	6S	1E	MADISON
101	E2NW	26	6S	1E	MADISON
102	E2SW	26	6S	1E	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.

133752-00 153955-00

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.

133753-00 153955-00

THIS WATER RIGHT CLAIM IS SUBJECT TO THE TERMS AND CONDITIONS OF A PRIVATE SETTLEMENT AGREEMENT, A COPY OF WHICH IS CONTAINED IN THE CLAIM FILE.