

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

CLAIMANT: TBLC Ltd.

CASE 41F-0046-R-2025
41F 29062-00

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

The captioned claim appeared in the Preliminary Decree for this Basin with issue remarks. 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.

Irrigation claim 41F 29062-00 appeared in the Preliminary Decree for this Basin with the following issue remarks.

THE WATER COURT FINDS NO LEGAL BASIS FOR THIS PURPOSE TO BE CONSIDERED A BENEFICIAL USE OR AN APPROPRIATION OF WATER.

POINT OF DIVERSION 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.

PURSUANT TO WATER COURT ORDER, IF NO OBJECTIONS TO THIS CLAIM ARE FILED, THE CLAIMED FLOW RATE WILL BE REINSTATED.

Montana law requires the Water Court to resolve issue remarks. Claimant, TBLC Ltd., completed the issue remark resolution process.

Issue

Are the issue remarks resolved?

Findings of fact

Irrigation claim 41F 29062-00 historically irrigated 24.42 acres located in the NENE of Section 18 (2.34 acres) and the N2NW of Section 17 (22.08 acres), from points of diversion located in the NWNWNW of Section 17 and the SENENE of Section 18, all in Township 8 South, Range 1 West with a flow rate of 17.00 CFS.

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. If the settlement agreement expands or enlarges an element of a claim, the burden of proof must be met. If evidence does not meet the burden of proof, the element shall not be expanded or enlarged. Rule 17(b), W.R.Adj.R.

5. The Montana Water Court may accept a settlement agreement that reduces or limits an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

6. 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.

7. 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.

8. If the Montana Water Court cannot resolve issue remarks based upon information in the claim file or information available to the Court, claimants shall be required to confer with the DNRC to attempt resolution of the issue remarks. Claimants shall file documentation to resolve the issue remarks, and the DNRC shall submit recommendations regarding disposition of the issue remarks. Section 85-2-248(5), MCA.

Analysis

Issue remark resolution

Irrigation statement of claim 41F 29062-00 identified its source as Morgan Gulch,

a tributary of the Madison River, with a point of diversion for a headgate and ditch and the irrigation of 50 acres. The statement of claim included a June 27, 1973 filed notice of appropriation for irrigation with 1,000 inches (25.00 CFS) of Morgan Gulch, diverted by a ditch on the “right and left bank” of Morgan Gulch, with said ditch running northeast and southeast with a point of diversion in the NENE of Section 18, Township 8 South, Range 1 West.

During its 1983 examination of irrigation claim 41F 29062-00, DNRC could not verify any acres of irrigation and therefore removed the claimed acreage from the abstract of the claim and added the issue remark questioning the beneficial use of the claim.

Initially, the court contacted claimant, TBLC Ltd., to provide information resolving the questionable beneficial use issue remark on irrigation claim 41F 29062-00. TBLC Ltd. provided information to the court as ordered. Upon review of TBLC Ltd.’s explanation and evidence, further evidence was required to resolve the issue remark questioning beneficial use of the claim. Accordingly, TBLC Ltd. was ordered to meet with DNRC to resolve the issue remark questioning beneficial use of the claim. DNRC provided a Memorandum to the court concerning TBLC Ltd.’s attempt to resolve the issue remark questioning beneficial use of the claim. DNRC reviewed all information provided to the court by TBLC Ltd. during this case proceeding, the claim file, 1979¹ and modern aerial photographs, Lidar data, and visited with TBLC Ltd.’s counsel. DNRC discussed that the filed notice of appropriation upon which claim 41F 29062-00 is historically based “references a ditch on both sides of the stream in the NENE of Sec. 18, carrying water northeast and southeast.” DNRC noted that a 1979 aerial photograph suggests a ditch existed in the N2NW of Section 17, and “slight shading in the N2NW of Sec. 17 and the NENE of Sec. 18, which could indicate irrigation.” DNRC then explains that the map attached to the statement of claim “appears imprecise, as it does not match the ditches or topography of the area and does not appear to incorporate the two ditches

¹ See Ch. VII.D.2.a. and b., May 2013 DNRC Water Claims Examination Manual for DNRC’s explanation concerning the use of 1975-1980 aerial photography for examination of the place of use identified by irrigation claims.

mentioned in the Notice of Appropriation.” DNRC’s review of a 2021 aerial photograph and a Lidar map confirms the points of diversion proposed by its Memorandum. DNRC utilized its recommended ditch locations and topography along with modern aerial imagery “due to the low-resolution nature of the historical imagery and the relatively small place of use” to make its recommendations concerning the acres irrigated and place of use. DNRC stated “it appears more likely than not that water was put to use for irrigation by means of the claimed ditches around the claimed priority date, and the claim requires slight modification to reconcile the discrepancies identified above.” DNRC recommended removal of the questionable beneficial use issue remark appearing on irrigation claim 41F 29062-00 and recommended the addition of a point of diversion and means of diversion and the identification of 24.42 acres of irrigation.

Upon review of the DNRC Memorandum, no written agreement from TBLC Ltd. with the modifications proposed by DNRC was included with the Memorandum and further evidence resolving the issue remark questioning beneficial use of the claim was required. Specifically, the court sought answers to:

- How long after the June 27, 1973 filed Notice of Appropriation were the ditches identified by the notice of appropriation completed?
- How much of the claimed 25.00 CFS flow rate was put to historical beneficial use?

On February 2, 2026, TBLC Ltd. filed its response providing additional information concerning the beneficial use of claim 41F 29062-00 and agreeing with DNRC’s proposed modifications to resolve the issue remarks. TBLC Ltd. explains no further evidence can be located concerning exactly when the ditches were completed. The 1979 aerial photograph, commonly used by the DNRC to provide confirmation of historical beneficial use, provides the best evidence. TBLC Ltd. provided information that 17.00 CFS of the prima facie 25.00 CFS flow rate conveys through ditches.

The claim appeared in the Preliminary Decree with the following notice issue remarks:

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	2.34		NENE	18	8S	1W	MADISON
2	22.08		N2NW	17	8S	1W	MADISON
TOTAL:	24.42						

The issue remarks should be removed from the claim abstract.

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 Electronic Mail:

Ryan K. Mattick
Mattick Law Firm, P.C.
ryan@matticklawnfirm.com
(Atty for: TBLC Ltd.)

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

Water Right Number: 41F 29062-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: TBLC LTD
PO BOX 1047
HASTINGS, NE 68902-1047

Priority Date: JUNE 27, 1973

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 17.00 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: 24.42

Source Name: MORGAN GULCH

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		SENE	18	8S	1W	MADISON

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: HEADGATE

2		NWNWNW	17	8S	1W	MADISON
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Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: HEADGATE

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	2.34		NENE	18	8S	1W	MADISON
2	22.08		N2NW	17	8S	1W	MADISON

Total: 24.42