

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

CLAIMANT: United States, DOA Forest Service

OBJECTOR: United States, DOA Forest Service

CASE 41F-0050-R-2025

41F 54242-00

41F 54254-00

41F 54255-00

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 stock claims received self-objections from claimant the United States, DOA Forest Service (“Forest Service”). The Forest Service objected to the point

of diversion, means of diversion, and place of use identified by claims 41F 54242-00 and 41F 54255-00.

Each of the claims received notice issue remarks concerning flow rate and volume. Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination. Montana law requires the Water Court to resolve issue remarks and objections.

On January 20, 2026, the Forest Service filed its Proposed Resolution.

Issues

1. Are the Forest Service’s objections to stock claims 41F 54242-00 and 41F 54255-00 resolved?
2. Is the notice issue remark on each claim resolved?
3. Should stock claim 41F 54255-00 be dismissed?

Findings of fact

1. The historically accurate point of diversion, reservoir location, and place of use for stock claim 41F 54242-00 is the SWSWNE of Section 16, Township 8 South, Range 2 West, Madison County. The reservoir type should be **onstream**.
2. Based upon the proposed modifications to the point of diversion and reservoir type for claim 41F 54242-00, the means of diversion should be “**Dam**.”
3. The standard flow rate information remark for an onstream reservoir and the claimed 4.75 AF volume should be added to stock claim 41F 54242-00.
4. The claimed 4.49 GPM flow rate should be added to stock claim 41F 54254-00.
5. Stock claim 41F 54255-00 should be dismissed.

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.

5. 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.

6. 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 - objection and issue remark resolution, dismissal of claim 41F 54255-00

The Forest Service filed evidence that the historically accurate point of diversion, reservoir location, and place of use identified by stock claim 41F 54242-00 is the SWSWNE of Section 16, Township 8 South, Range 2 West, and the reservoir type should be onstream. (See Jan. 20, 2026 Proposed Resolution, Declaration of Thor Burbach and Ex. B-D, 1947 and 1968 Aerial Photos.) Based upon the proposed modified reservoir type from “offstream” to “onstream,” it appears the Forest Service omitted the modified means of diversion. It appears the means of diversion should be corrected from

“Headgate” to “Dam.”

The claims appeared in the Preliminary Decree with the following issue remarks:

Claim 41F 54242-00

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

Claims 41F 54254-00 and 41F 54255-00

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

Water users were given the opportunity to review the claims and file an objection. The deadline to file objections expired. The only objections filed to these claims were not to the flow rate or volume. Due to the modified reservoir type, “onstream,”¹ the standard flow rate information for an onstream stock reservoir should be added to claim 41F 54242-00, and the claimed volume should be added to stock claim 41F 54242-00. The claimed flow rate should be added to stock claim 41F 54254-00.

The Forest Service requested to withdraw statement of claim 41F 54255-00. The DNRC Database identifies the Forest Service as the current claimant of water right claim 41F 54255-00. The Montana Cadastral Database located at <https://svc.mt.gov/msl/mtcadastral>, identifies the Forest Service as the current property owner of the place of use identified by claim 41F 54255-00.

Conclusions of law

For stock claim 41F 54242-00, the modified point of diversion, reservoir record, reservoir type, and place of use are supported by evidence in the record overcoming the prima facie statement of claim. The record before the court justifies the modifications proposed by the Forest Service’s objection and resolves its objection to claim 41F 54242-00.

A mistake arising from omission or oversight may be corrected at any time. Due The means of diversion for stock claim 41F 54242-00 should be modified to “Dam.”

Adding the standard flow rate information remark and claimed volume to claim

¹ Rule 24(b)(3)(i), W.R.C.E.R.

41F 54242-00 and the claimed flow rate to claim 41F 54254-00 resolved the issue remark on each claim noting the claimed flow rate/volume would be added to the claim. The issue remark served its notice purpose.

The Forest Service’s request to withdraw statement of claim 41F 54255-00 is properly filed with the court. The dismissal of claim 41F 54255-00 resolves the Forest Service’s objection to the claim and moots the issue remark appearing on the claim.

Recommendations

Stock claim 41F 54242-00 should be modified as follows to accurately reflect historical use.

FLOW RATE: ~~BLANK~~

A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

VOLUME: ~~BLANK~~ **4.75 AF**

POINT OF DIVERSION AND 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> |
| | SWSWNE | SWSWNE | 16 | 8S | 2W | MADISON |

Diversion Means: ~~HEADGATE~~ **DAM**

Reservoir: ~~OFFSTREAM~~ **ONSTREAM**

| | | | | | |
|------------------------|-----------------------|-------------------|-------------------|-------------------|----------------------|
| <u>GOVT LOT</u> | <u>QTR SEC</u> | <u>SEC</u> | <u>TWP</u> | <u>RGE</u> | <u>COUNTY</u> |
| SWSWNE | SWSWNE | 16 | 8S | 2W | MADISON |

Stock claim 41F 54254-00 should be modified as follows to accurately reflect historical use.

FLOW RATE: ~~BLANK~~ **4.49 GPM**

The notice issue remark should be removed from claim abstracts 41F 54242-00 and 41F 54254-00.

Stock claim 41F 54255-00 should be dismissed.

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 54242-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date: JANUARY 1, 1940

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: 4.75 AC-FT

Source Name: UNNAMED TRIBUTARY OF WIGWAM 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 | | SWSWNE | 16 | 8S | 2W | MADISON |

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

| <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------------|----------------|------------|------------|------------|---------------|
| | SWSWNE | 16 | 8S | 2W | MADISON |

Diversion to Reservoir: DIVERSION # 1

Capacity: 1.50 ACRE-FEET

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 | | | SWSWNE | 16 | 8S | 2W | MADISON |

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

Water Right Number: 41F 54254-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date: JANUARY 1, 1919

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 4.49 GPM

***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: SPRING, UNNAMED TRIBUTARY OF WIGWAM CREEK

Source Type: GROUNDWATER

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 | | NWNWNE | 20 | 8S | 2W | MADISON |

Period of Diversion: JULY 1 TO OCTOBER 31

Diversion Means: SPRING BOX

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 | | | NWNWNE | 20 | 8S | 2W | MADISON |

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

Water Right Number: 41F 54255-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: SPRING, UNNAMED TRIBUTARY OF WIGWAM CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.