

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

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CLAIMANTS: Antoinette C. Scully; John P. Scully

OBJECTOR: John P. Scully

NOTICE OF INTENT TO APPEAR: HRMT Land LLC

CASE 41F-0182-R-2025  
41F 110429-00

**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**

Irrigation claim 41F 110429-00 received the following issue remarks.

YOLANDA BLAKELY FILED A LATE OBJECTION TO THE PRIORITY DATE, ACRES IRRIGATED, VOLUME AND FLOW RATE. JOHN P. ZUELKE FILED A LATE OBJECTION TO THE OWNERSHIP, PLACE OF USE AND MEANS OF DIVERSION. THESE LATE OBJECTIONS WILL BE HEARD AFTER PROPER NOTICE IN THE NEXT OBJECTION LIST.

DITCH NAME 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.

Issue remarks most often result from Department of Natural Resources and Conservation (“DNRC”) claims examination. The captioned claim was subject to the court’s December 14, 2012 Order Addressing Reexamination. The court ordered DNRC to, amongst other items, standardize ditch names and to add an issue remark to the abstract providing notice to the claimants and other water users about the modification. The court may also add issue remarks providing some sort of notice to water users concerning a claim. The court ordered the addition of the above identified notice issue remark concerning late filed objections during previous proceedings.

John P. Scully filed an objection to the priority date identified by irrigation claim 41F 110429-00. HRMT Land LLC filed a notice of intent to appear for irrigation claim 41F 110429-00.

Montana law requires the Water Court to resolve issue remarks, objections, and notices of intent to appear.

On December 10, 2025, John P. Scully and Antoinette C. Scully (“Scully”) filed a Statement and Unopposed Motion to Amend Priority Date to Resolve Scully’s Self-Objection (“Scully Statement”). All exhibits identified by this report are attached to the Scully Statement.

## **Issues**

Preliminary Decree abstract 41F 110429-00 identifies a filed water right from the Madison River with a June 12, 1919 priority date, for irrigation of a place of use in the E2 of Section 33, Township 1 North, Range 2 East, Gallatin County, via the Hutchinson Ditch.

1. What is the historically accurate priority date?

2. Are the objection and the notice of intent to appear resolved?
3. Are the issue remarks resolved?

### **Findings of fact**

1. Scully provided a notice of appropriation filed by Oliver Harris, a co-owner of the Gilleland Ditch Company, to support resolution of the priority date objection. Scully asserts the priority date should be August 6, 1883, based upon the Harris notice of appropriation. (Ex. A, p. 3)

2. A preponderance of evidence establishes the historically accurate priority date for irrigation claim 41F 110429-00 is August 6, 1883.

3. An information remark noting the parties filed a private water user agreement with the court during these case proceedings should be added to the abstract of irrigation claim 41F 110429-00.

### **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. This prima facie proof may be contradicted and 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, evidence meeting the burden of proof must be provided. If the evidence does not meet the burden of proof, the element shall not be expanded or enlarged. Rule 17(b), W.R.Adj.R.

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.

7. The Water Court may add clear and unambiguous information remarks to a claim abstract that describe historical use and reduce the possibility of future conflict. *See Clark Fork Coalition v. Hirsch*, 2014 Mont. Water LEXIS 15 at \*\*10-14 (Oct. 29, 2014).

8. 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 - priority date; objection, notice of intent to appear and issue remark resolution**

Scully states the wrong filed notice of appropriation was mistakenly included with and in support of irrigation statement of claim 41F 110429-00. Scully explains that the notice of appropriation attached to statement of claim 41F 110429-00 was for the “nearby Dell Ditch,” not the Hutchinson Ditch claimed by the statement of claim, and this error “resulted in an incorrect priority date being decreed for 41F 110429-00.”

Scully provided the following explanation and a plethora of evidence to establish that the Harris notice of appropriation is the correct historical basis for irrigation claim 41F 110429-00.

- The point of diversion on the Madison River for the Hutchinson Ditch is the NWSESW of Section 7, Township 2 South, Range 2 East.
- The 162.00-acre place of use in Section 33, Township 1 North, Range 2 East is within Scully's property which includes all of Section 33, Township 1 North, Range 2 East.
- Stephen P. McDonnell and Helen A. McDonnell filed irrigation statement of claim 41F 110429-00 and acquired the ranch property in 1980 from Shelton Ranches. Stephen F. McDonnell acquired the ranch property from Stephen P. McDonnell and Helen A. McDonnell, his son and daughter-in-law, in 1992. Scully purchased the ranch from his uncle, Stephen F. McDonnell, in 2002. (Stephen P. McDonnell Affidavit, Ex. C; Thomas Charles "Chuck" Bryson Affidavit, Ex. L)
- A chain of title establishes ownership of the Section 33 place of use from the original appropriator, Oliver Harris.
  - Oliver Harris bought the SE of Section 33 from the Northern Pacific Railway Company on May 22, 1883. (Ex. M)
  - Oliver Harris sold the SE of Section 33 to John B. Sloan and F.C. Berendes together with all appurtenances on June 27, 1886. (Ex. F.)
  - F.C. Berendes sold his interest in Section 33 to John B. Sloan on November 11, 1891. This deed specifically mentioned the Hutchinson Ditch from the Madison River. (Ex. G)
  - John B. Sloan and Margaret Sloan owned the SE of 32 and the SE and W2 of Section 33 by 1923 and a 2/13<sup>th</sup> interest "in and to the water and the right to conduct same in what is known as the Hutchinson Ditch taking water from the Madison River in the State of Montana." (Ex. H)

- John B. Sloan and Margaret Sloan lost the property through foreclosure, which was then purchased on January 21, 1939, by Dean D. Francis, with a 2/13<sup>th</sup> interest in the Hutchinson Ditch. (Exs. I and J)
- By November 4, 1960, Dean D. Francis owned the SE of Section 32 and all of Section 33. Dean D. Francis sold the property to Charles R. Kyd and Beverly S. Kyd, November 4, 1960, filed for record October 16, 1963. (Ex. K) Kyd Cattle Company sold the ranch property to Shelton Ranches who sold it to Stephen P. McDonnell around 1980. (Thomas Charles “Chuck” Bryson Affidavit, Ex. L)
- Oliver Harris, a co-owner of the Gilleland Ditch Company, filed a notice of intent to appropriate 1,000 miner’s inches from the Madison River via a ditch on the east bank of the Madison River, near “Black’s Station” located approximately in Section 18, Township 2 South, Range 1 East. (Ex. A, p. 3)
- The original Hutchinson Ditch Diversion in Section 18 was relocated in the 1940s after legal action was taken against Montana Power Company concerning damage caused by irregular flow in the Madison River. (Ex. L at Ex. A, p. 3-4; *State ex. rel. Crowley*, 108 Mont. 89, 88 P.2d 23, 121 A.L.R. 1031 (1939)) (*See and compare* the 1883 Harris Notice of Appropriation Ex. A, p. 3; 1883 Declaration of Gilleland Ditch Company Ex. N; and the 1953 Gallatin County Water Resources Survey Maps Ex. O) The Hutchinson Ditch point of diversion was relocated to the NWSESW of Section 7, Township 2 South, Range 2 East. (Ex. L, ¶8(a))
- Multiple sources and pieces of evidence confirm the historical accuracy of the statement of claim’s identification of the Hutchinson Ditch as the means of conveyance to the claimed place of use, and that ranch owners have had, and still have, maintenance agreements with other water users on the

Hutchinson Ditch. These multiple sources of information and evidence include:

- 1891 and 1923 deeds (Exs. G-J)
- Stephen P. McDonnell Affidavit (Ex. C)
- Thomas Charles “Chuck” Bryson Affidavit (Ex. L, with Ex. A-C)
- Norman J. Bryson Affidavit (Ex. L at Ex. A)
- Kenneth L. Smith Affidavit (Ex. P)
- 1953 Gallatin County Water Resources Survey Maps (Ex. O)
- Several affiants attest that Hutchinson Ditch traverses the east part of the ranch ending at the ranch’s northern boundary in Section 33. (McDonnell Ex. C, ¶ 8; Bryson Ex. L ¶¶ 9, 14-15; Compare with Ex. N, Gilleland & Co. Ditch Declaration and Ex. O, Gallatin County WRS Maps)
- There are 3 ditches in the area: Hutchinson, Dell, and Sloan. The Sloan Ditch and the Dell Ditch do not have the same point of diversion as the Hutchinson Ditch. The Dell Ditch begins in Section 31, Township 1 South, Range 2 East and ends in Section 3, Township 1 South, Range 2 East, the southernmost boundary of the ranch (Ex. O), while the Sloan Ditch merges with the Hutchinson Ditch before reaching the southernmost boundary of the ranch. (Ex. L, ¶¶ 9-10 and Ex. A of Ex. L) Dell Ditch water is carried by the Hutchinson Ditch resulting in water use and ditch maintenance agreements between these ditch users, including Stephen F. McDonnell. (Ex. C; Ex. L, ¶16(c); and Ex. C of Ex. L)
- The Darlinton notice of appropriation mistakenly attached to statement of claim 41F 110429-00 identifies an irrigation ditch with a point of diversion in the SWNWNW of Section 29, Township 1 South, Range 2 East. The Dell Ditch conveys water through Section 29, not the Hutchinson Ditch. The Harris notice of appropriation supports the historical use of Hutchinson Ditch for the irrigation claimed by statement of claim 41F 110429-00, not the Darlinton notice of appropriation. (Scully Statement, p. 9-10)

Scully's Statement and Unopposed Motion to Amend Priority Date to Resolve Scully's Self-Objection and its exhibits may be viewed on the court's case management system, FullCourt Enterprise, at document sequence 8.00.

Judicial notice is taken of the source index for the Basin 41F Preliminary Decree located at [https://dnrc.mt.gov/\\_docs/water/adjudication/Decrees-2023/DECREE-41F-SRCINDEX-23\\_0726.pdf](https://dnrc.mt.gov/_docs/water/adjudication/Decrees-2023/DECREE-41F-SRCINDEX-23_0726.pdf). No other water right claim identifies the Harris notice of appropriation as its historical basis.

Scully proposed the addition of an information remark noting a private agreement concerning use of the claim. The proposed information remark provides meaningful information for enforcement of the claim. The private agreement and addition of the information remark noting the private agreement resolves the concerns of notice of intent to appear party HRMT Land LLC. The private agreement may be viewed on the court's case management system, FullCourt Enterprise, at document sequence 9.00.

The late objection issue remark and ditch name issue remarks provided the opportunity for claimant and other water users to object to the claim. No party assumed the late objections noted by the issue remark. No water users objected to the ditch name. The only objection to and notice of intent to appear for claim 41F 110429-00 are resolved by these proceedings.

### **Conclusions of law**

Scully's evidence overcomes, by a preponderance of evidence, the prima facie proof afforded the priority date identified by statement of claim 41F 110429-00. The more senior priority date, based upon the Harris notice of appropriation, is supported by the record and should be implemented. The modification to claim 41F 110429-00 is justified and resolves the Scully objection to the claim.

The private agreement on file with the Water Court and the information remark concerning the private agreement reduces the possibility of future conflict. The information remark should be added to the claim abstract. The concerns of notice of intent to appear party HRMT Land LLC are resolved by the private agreement and the addition of the information remark noting the private agreement.

The late objection issue remark is resolved. The ditch name issue remark appearing on the claim abstract served its notice purpose.

**Recommendations**

Irrigation claim 41F 110429-00 should be modified as follows to accurately reflect historical use.

**PRIORITY DATE:**                      ~~JUNE 12, 1919~~    **AUGUST 6, 1883**

**ADD INFORMATION REMARK:**

**USE OF THIS CLAIM IS SUBJECT TO A PRIVATE AGREEMENT ON FILE WITH THE WATER COURT IN CASE 41F-0182-R-2025.**

The issue remarks should be removed from the claim abstract.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm the recommendations have been implemented 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 110429-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** ANTOINETTE C SCULLY  
PO BOX 986  
ENNIS, MT 59729-0986

JOHN P SCULLY  
PO BOX 986  
ENNIS, MT 59729-0986

**Priority Date:** AUGUST 6, 1883

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 6.14 CFS

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 162.00

**Source Name:** MADISON RIVER

**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		NWSESW	7	2S	2E	GALLATIN

**Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** HUTCHINSON DITCH

**Period of Use:** APRIL 15 TO OCTOBER 15

**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	81.00		NE	33	1N	2E	GALLATIN
2	81.00		SE	33	1N	2E	GALLATIN

**Total:** 162.00

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**Remarks:**

USE OF THIS CLAIM IS SUBJECT TO A PRIVATE AGREEMENT ON FILE WITH THE WATER COURT IN CASE 41F-0182-R-2025.