

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

CLAIMANT: United States, DOI Bureau of Land Management

CASE 41F-0193-R-2026

41F 30141632

OBJECTORS: United States, DOI Bureau of Land Management;
Peter & Kelly C. McLoughlin Revocable Living
Trust; Sampson Investments 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 30141632 received a self-objection from claimant the United

States, DOI Bureau of Land Management (“BLM”) and objections from the Peter & Kelly C. McLoughlin Revocable Living Trust and Sampson Investments LLC. All parties objected to the source name identified by claim 41F 30141632.

The claim received the following notice issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41F DECREE ISSUED 07/25/1984.

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.

Issues

1. Are the objections to claim 41F 30141632 resolved?
2. Is the notice issue remark on claim 41F 30141632 resolved?

Finding of fact

A preponderance of evidence establishes the source name for stock claim 41F 30141632 should be the Madison River.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-222, 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, 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.

Analysis

Issues 1 and 2 - objection and issue remark resolution

On November 1, 2022, BLM filed a pre-decree amendment for stock claim 41F 30141632 stating the amended information “Replaces claimed information.” BLM proposed pre-decree amendments to the source, point of diversion, and place of use identified by claim 41F 30141632. A map included with the pre-decree amendment clearly identifies the Madison River as the source.

DNRC implemented the pre-decree amendments to point of diversion and place of use but overlooked the pre-decree amendment to the source. The objections to claim 41F 30141632 are all based on BLM’s pre-decree November 1, 2022 Amendment and the fact that DNRC did not implement the pre-decree amendment to source.

All objectors agree that the source, based upon the modified point of diversion and place of use, should be the Madison River as proposed by the November 1, 2022 pre-decree amendment.

Conclusions of law

The evidence entered into the record for source name overcomes prima facie statement of claim 41F 30141632, justifies the modified source name, and resolves all objections to claim 41F 30141632.

The issue remark on claim 41F 30141632 noting the lack of the claim's inclusion in the previous Basin 41F decree served its notice purpose.

Recommendations

Stock claim 41F 30141632 should be modified as follows to accurately reflect historical use.

SOURCE NAME:

~~UNNAMED TRIBUTARY OF O'DELL CREEK~~

MADISON RIVER

The notice issue remark should be removed from the abstract of the claim.

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:

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

Water Right Number: 41F 30141632 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101-4669

Priority Date: MARCH 16, 1938

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: 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		SWSWSE	28	7S	1W	MADISON

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

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		SWNESW	28	7S	1W	MADISON
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3		NWSW	28	7S	1W	MADISON
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

4		SESW	28	7S	1W	MADISON
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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			SWSWSE	28	7S	1W	MADISON
2			SWNESW	28	7S	1W	MADISON
3			NWSW	28	7S	1W	MADISON
4			SESW	28	7S	1W	MADISON

Remarks:

BLM FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES BLM CLAIM ID BLM2274 AND GRAZING ALLOTMENT MT10465.