

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

CLAIMANTS: Barry K. Allen; Linda P. Allen; Slaton-Newton
Family Trust; Sphinx Mountain Trust

CASE 41F-0502-R-2025

41F 136447-00

41F 136463-00

OBJECTORS: Barry K. Allen; Linda P. Allen; Sphinx Mountain
Trust

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 Water Court issued two decrees for Basin 41F - the Temporary Preliminary

Decree in 1984 and the Preliminary Decree in 2023. To prepare the Preliminary Decree for issuance, the Water Court ordered the Department of Natural Resources and Conservation (“DNRC”) to standardize points of diversion, ditch names, and sources and to add an issue remark to claims noting such modifications.

Irrigation claim 41F 136447-00 appeared in the Preliminary Decree with the following issue remark:

POINT OF DIVERSION 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.

The issue remark instructed claimants and other water users that if no objections were filed to the modifications, the point of diversion and source name would remain as they appeared on the Preliminary Decree abstract.

Co-claimants Sphinx Mountain Trust, Barry K. Allen, and Linda P. Allen filed an objection to the source identified by the Preliminary Decree Abstract for irrigation claim 41F 136447-00 stating, “It appears that the source names were incorrectly modified by DNRC during claim re-examination.”

Co-claimants Barry K. Allen and Linda P. Allen filed an objection to the points of diversion and places of use identified by the Preliminary Decree Abstract for stock claim 41F 136463-00 stating, “It appears that the point of diversion and place of use legal land descriptions are overbroad and should be modified to be more precise and to accurately reflect historical beneficial use.”

Montana law requires the Water Court to resolve objections and issue remarks. On June 3, 2025, Sphinx Mountain Trust, Barry K. Allen, and Linda P. Allen filed an Unopposed Motion to Resolve Self-Objections and DNRC Issue Remark. Co-claimant, the Slaton-Newton Family Trust, had no objection to the Motion.

Issues

1. Is the objection to irrigation claim 41F 136447-00 resolved?

2. Is the issue remark concerning point of diversion and source name on irrigation claim 41F 136447-00 resolved?
3. Is the objection to stock claim 41F 136463-00 resolved?

Findings of Fact

The historically accurate source name for irrigation claim 41F 136447-00 is Bear Creek, North Fork.

The historically accurate point of diversion and place of use for livestock direct from source claim 41F 136463-00 is the S2NESE, NESESE, NWSE, and the NENESW of Section 3, Township 8 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. 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. The 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. 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 – objection and issue remark resolution irrigation claim 41F 136447-00; objection resolution stock claim 41F 136463-00

Judicial notice is taken of the Madison County Water Resources Survey (1965) (“WRS”). WRS pages 42 and 48 of Part II Maps Showing Irrigated Areas, depicts the North Fork of Bear Creek running through the point of diversion legal land descriptions identified by the Preliminary Decree abstract for irrigation claim 41F 136447-00. The WRS source name and the WRS source location match the DNRC Water Rights Query System maps provided with the Motion depicting the DNRC standardized point of diversion. The Motion and its exhibits may be viewed on the court’s case management system, FullCourt Enterprise, at document sequence 3.00.

The Madison County Water Resources Survey, information in claim file 41F 136447-00, and evidence filed in support of the Motion all support the North Fork of Bear Creek as the source.

The notice issue remark concerning point of diversion and source name provided the opportunity for claimants and other water users to object to the claim. Sphinx

Mountain Trust, Barry K. Allen, and Linda P. Allen filed the only objection to the source name identified by irrigation claim 41F 136447-00. Sphinx Mountain Trust's, Barry K. Allen's, and Linda P. Allen's objection is resolved by these proceedings.

The objection to stock claim 41F 136463-00 results in a refinement of the point of diversion and place of use legal land descriptions.

Conclusions of law

The evidence before the court justifies the modification to irrigation claim 41F 136447-00 and resolves the objection to and the issue remark appearing on claim 41F 136447-00.

The evidence entered into the record is a reduction within the parameters of statement of claim 41F 136463-00, justifies the modifications to the claim, and resolves the objection to the claim.

The modifications proposed to each claim should be accepted by the court.

Recommendations

Irrigation claim 41F 136447-00 should be modified as follows to accurately reflect historical use.

SOURCE NAME: ~~BEAR CREEK~~ BEAR CREEK, NORTH FORK

Stock claim 41F 136463-00 should be modified as follows to accurately reflect historical use.

POINT OF DIVERSION AND PLACE OF USE:

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
S2		3	8S	1E	MADISON
S2NESE		3	8S	1E	MADISON
NESESE		3	8S	1E	MADISON
NWSE		3	8S	1E	MADISON
NENESW		3	8S	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 USPS Mail:

Slaton-Newton Family Trust
380 Wyndgate Rd
Sacramento, CA 95864

Service Via Electronic Mail:

Jeremy A. Michael
Cusick & Michael, P.C.
office@cmrlawmt.com
(Atty for: Barry K. Allen; Linda P. Allen; Sphinx Mountain Trust)

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

Water Right Number: 41F 136447-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

BARRY K ALLEN
4650 W HIGHLAND RD
MEQUON, WI 53092-1127

LINDA P ALLEN
4650 W HIGHLAND RD
MEQUON, WI 53092-1127

SLATON-NEWTON FAMILY TRUST
380 WYNDGATE RD
SACRAMENTO, CA 95864

SPHINX MOUNTAIN TRUST
%ALLEN LINDA TRUSTEE
PO BOX 1172
BOCA GRANDE, FL 33921-1172

Priority Date: JUNE 19, 1885

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 4.73 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: 431.90

***Source Name:** BEAR CREEK, NORTH FORK

Source Type: SURFACE WATER

ALSO KNOWN AS UPPER BEAR 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		SWSWSW	36	7S	1E	MADISON

Period of Diversion: APRIL 15 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: NORTH FORK DITCH

2		NWSENE	2	8S	1E	MADISON
---	--	--------	---	----	----	---------

Period of Diversion: APRIL 15 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: ORR DITCH

Period of Use: APRIL 15 TO OCTOBER 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	227.90		N2	2	8S	1E	MADISON
2	47.90		N2S2	2	8S	1E	MADISON
3	132.70		NE	3	8S	1E	MADISON
4	23.40		N2SE	3	8S	1E	MADISON
Total:	431.90						

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.

136447-00

136464-00

136465-00

136466-00

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

Water Right Number: 41F 136463-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BARRY K ALLEN
4650 W HIGHLAND RD
MEQUON, WI 53092-1127

LINDA P ALLEN
4650 W HIGHLAND RD
MEQUON, WI 53092-1127

Priority Date: DECEMBER 19, 1881

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: BEAR CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS UPPER BEAR 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		S2NESE	3	8S	1E	MADISON

Period of Diversion: JUNE 1 TO OCTOBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		NESESE	3	8S	1E	MADISON
---	--	--------	---	----	----	---------

Period of Diversion: JUNE 1 TO OCTOBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3		NWSE	3	8S	1E	MADISON
---	--	------	---	----	----	---------

Period of Diversion: JUNE 1 TO OCTOBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

4		NENESW	3	8S	1E	MADISON
---	--	--------	---	----	----	---------

Period of Diversion: JUNE 1 TO OCTOBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JUNE 1 TO OCTOBER 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			S2NESE	3	8S	1E	MADISON
2			NESESE	3	8S	1E	MADISON
3			NWSE	3	8S	1E	MADISON
4			NENESW	3	8S	1E	MADISON