FILED
10/30/2026
Melissa Lockman
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41F-0141-R-2025
Stradley, Anna
25.00

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: Bryan S. Finkle; Finkle Living Trust; Longhorn Ranch, LLC; Chris Mercer; Wendell W. Mercer; Jody Sprout; Vaughan Family Trust; Williams Living Trust; Khalil Family Trust	**CASE 41F-0141-R-2025** 41F 35565-00

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

Stock claim 41F 35565-00 appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DITCH CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

All elements appeared on the Basin 41F Preliminary Decree objection list for claim 41F 35565-00.

Montana law requires the Water Court to resolve issue remarks. Claimants were ordered to meet with DNRC to attempt resolution of the issue remark. Claimant Longhorn Ranch, LLC ("Longhorn") completed the issue remark resolution process. While several claimants other than Longhorn contacted DNRC, none of the remaining claimants completed the issue remark process. The court set a comment deadline for all claimants, except Longhorn to agree or disagree with the DNRC's recommendations.

Issue

Is the point of diversion issue remark appearing on stock claim 41F 35565-00 resolved?

Findings of fact

1. The historically accurate source for stock claim 41F 35565-00 is Bear Creek.

2. The historically accurate point of diversion for stock claim 41F 35565-00 is the NWSENE of Section 35, Township 6 South, Range 1 West, Madison County.

3. The historically accurate means of diversion is headgate.

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. 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.

4. 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

Claimants were ordered to meet with DNRC to attempt resolution of the point of diversion issue remark. On September 5, 2025, DNRC filed a Memorandum. While claimants Bryan S. Finkle, the Finkle Living Trust, Jody Sprout, and Longhorn Ranch, LLC visited with DNRC, only Longhorn proposed a resolution for the issue remark. DNRC recommended a different resolution for the issue remark.[1] On February 6, 2026, Longhorn filed its agreement with the DNRC's recommendations. A filing deadline for the remainder of the claimants was set to determine whether they agreed with the DNRC's recommendations. The order included language stating that if the remainder of

[1] DNRC stated that stock claim 41F 35565-00 and irrigation claim 41F 35573-00 may be multiple uses of the same water right. Irrigation claim 41F 35573-00 was withdrawn by Longhorn Ranch, LLC. *See* Sept. 30, 2026 Order Dismissing Claim and Order Closing Case 41F-0164-R-2025, FCE Doc. 21.00.

the claimants did not file a statement by the deadline it would be deemed their agreement with the DNRC's proposed resolution of the issue remark. No other claimants filed a statement by the deadline.

DNRC explained that during initial claim examination there was confusion about the source of stock claim 41F 35565-00. Based upon a review of the statement of claim, the information attached to the statement of claim, and the claims examination material, the statement of claim identified Bear Creek as its source and the Notice of Appropriation in the claim file described two ditches opposite one another on the east and west bank of Bear Creek in the NE of Section 36, Township 6 South, Range 1 West with each ditch running north. During claims examination DNRC changed the source to Boulder Creek and changed the point of diversion to Section 36, Township 6 South, Range 1 West so the point of diversion was on Boulder Creek. DNRC contacted claimant to resolve the source and point of diversion discrepancy. Claimant at the time responded. DNRC left its modifications to the source and point of diversion for the claim and placed the issue remark on the claim concerning the point of diversion. DNRC posits that the Notice of Appropriation contains a clerical error identifying the point of diversion in Section 36, Township 6 South, Range 1 West when the point of diversion was in Section 35, Township 6 South, Range 1 West. DNRC recommends the source name should be modified to the source identified by the prima facie statement of claim, Bear Creek, and the point of diversion modified to match the description of the point of diversion described in the Notice of Appropriation with the Section number corrected from 36 to 35.

Conclusions of law

Based upon the claim file, the DNRC's recommendations, and claimants' agreement with DNRC's recommendations, the evidence entered into the record for source, point of diversion, and means of diversion both confirms and overcomes where necessary the source, point of diversion, and means of diversion identified by prima facie statement of claim 41F 35565-00, justifies the modifications to the claim, and resolves the point of diversion issue remark appearing on the claim.

Recommendations

Stock claim 41F 35565-00 should be modified as follows to accurately reflect historical use.

SOURCE: ~~BOULDER CREEK~~ **BEAR CREEK**

POINT OF DIVERSION AND MEANS OF DIVERSION:

GOVT LOT	QTR SEC	SEC	TWP	RGE	COUNTY
	NWSENE ~~NENESE~~	**35** ~~36~~	6S	1W	MADISON

Diversion Means: ~~DITCH~~ **HEADGATE**

The point of diversion issue remark 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.

Service via USPS Mail

Bryan S. Finkle
Finkle Living Trust % Brian S. Finkle, Trustee
9 Sheffield Dr
Ennis, MT 59729-9108

Chris Mercer
Wendell W. Mercer
PO Box 1501
Ennis, MT 59729

Jody Sprout
PO Box 223
Ennis, MT 59729-0223

Vaughan Family Trust
% Larry Q. & Lynn A. Vaughan, Co-Trustees
29331 Paseo Palmar
San Juan Capistrano, CA 92675-3645

Williams Living Trust
4467 US Hwy 287 N
Ennis MT 59729-9006

Khalil Living Trust
Joseph A. & Lauren H. Khalil, Trustees
4487 US Hwy 287 N
Ennis MT 59729

Service via Electronic Mail

W. John Tietz
Hallee C. Frandsen
Browning Kaleczyc Berry & Hoven P.C.
john@bkbh.com
hallee@bkbh.com
wcfilings@bkbh.com
(Attorneys for Longhorn Ranch, LLC)

Electronically Signed By:
Hon. Judge Anna Stradley
Fri, Oct 30 2026 10:42:53 AM

POST DECREE

ABSTRACT OF WATER RIGHT CLAIM

MADISON RIVER

BASIN 41F

Water Right Number: **41F 35565-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

BRYAN S FINKLE
9 SHEFFIELD DR
ENNIS, MT 59729-9108

CHRIS MERCER
PO BOX 1501
ENNIS, MT 59729

WENDELL W MERCER
PO BOX 1501
ENNIS, MT 59729-1501

JODY SPROUT
PO BOX 223
ENNIS, MT 59729-0223

FINKLE LIVING TRUST
%FINKLE, BRIAN S TRUSTEE
9 SHEFFIELD DR
ENNIS, MT 59729-9108

KHALIL FAMILY TRUST
KHALIL, JOSEPH A & LAUREN H, TRUSTEES
4487 US HWY 287 N
ENNIS, MT 59729

LONGHORN RANCH LLC
602 S FERGUSON AVE STE 2
BOZEMAN, MT 59718-6483

VAUGHAN FAMILY TRUST
% VAUGHAN, LARRY Q & LYNN A CO-TRUSTEES
29331 PASEO PALMAR
SAN JUAN CAPISTRANO, CA 92675-3645

WILLIAMS LIVING TRUST
4467 US HWY 287
ENNIS, MT 59729-9006

Priority Date: APRIL 28, 1942

Type of Historical Right: FILED

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

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWSENE	35	6S	1W	MADISON

Period of Diversion: MAY 1 TO JULY 31

Diversion Means: HEADGATE

Period of Use: MAY 1 TO JULY 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1				23	6S	1W	MADISON
2				26	6S	1W	MADISON