FILED
10/15/2026
Melissa Lockman
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41F-0307-R-2026
Stradley, Anna
3.00

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

* *

CLAIMANT: State of Montana University System (MSU)	**CASE 41F-0307-R-2026** 41F 107251-00 41F 107293-00

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 107251-00 received the following issue remarks:

THE PRIORITY DATE AND THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT APPEAR TO BE A MULTIPLE USE[1] OF THE SAME RIGHT. IT APPEARS THE PRIORITY DATE IS 04/01/1869 AND THE TYPE OF HISTORICAL RIGHT IS DECREED 107251-00, 107293-00.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON HOT SPRING CREEK WITH A PRIORITY DATE PREDATING CASE NO 1122, MADISON COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

Irrigation claim 41F 107293-00 received the following issue remark:

MEANS OF DIVERSION 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 result from Department of Natural Resources and Conservation ("DNRC") claims examination. If claims examination cannot confirm an element of a claim based upon historical resources, or water right claim examination rules require identification of an issue, or a Water Court order requires identification of an issue, an issue remark is added to the claim. An issue remark may also simply provide notice to water users concerning a claim.

Montana law requires the Water Court to resolve issue remarks. The issue remark concerning claim 41F 107251-00 predating Case No. 1122 and the issue remark appearing on irrigation claim 41F 107293-00 were resolved based upon information before the court. The type of historical right issue remark on claim 41F 107251-00 was not resolved through the objection process and while there appeared to be enough information in the claim file and before the court to resolve the issue remark, pursuant to § 85-2-248(11), MCA the court may not resolve an issue remark modifying an element without agreement from the claimant. Therefore, a deadline was set for the State of Montana University System (MSU) ("MSU") to agree with or to file evidence resolving the issue remark.

MSU filed a Statement Regarding Type of Historical Right ("Statement") agreeing with the type of historical right issue remark on claim 41F 107251-00.

[1] Note: the claim abstracts already include a multiple use information remark.

Issues

1. What type of historical right should claim 41F 107251-00 identify?
2. Are the issue remarks on each claim resolved?

Finding of fact

A preponderance of evidence establishes the historically accurate type of historical right for stock claim 41F 107251-00 is "decreed."

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. 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. 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 – type of historical right claim 41F 107251-00 and issue remark resolution

MSU's Statement confirmed the historical accuracy of the type of historical right identified by the issue remark on claim 41F 107251-00.

The modified type of historical right for claim 41F 107251-00 moots the issue remark stating it is a "use" right predating District Court decree, Case No. 1122, Madison County.

Irrigation claim 41F 107293-00 received an issue remark noting DNRC modified the means of diversion during claims examination. The issue remark instructed MSU and other water users that if no objections were filed to the modification, the modified element would remain as it appears on the Preliminary Decree abstract. Water users were given the opportunity to review claim 41F 107293-00 and file an objection. The deadline to file objections passed. No water users, including MSU, filed an objection against the claim.

Conclusions of law

The type of historical right issue remark on claim 41F 107251-00, the information resulting in the issue remark, and MSU's statement in agreement with the issue remark overcomes, by a preponderance of evidence, the prima facie proof afforded the type of historical right for claim 41F 107251-00. The type of historical right issue remark is resolved. The modified type of historical right moots the issue remark on claim 41F 107251-00 stating it is a "use" right predating District Court decree, Case No. 1122, Madison County.

The issue remark on irrigation claim 41F 107293-00 noting modification of the means of diversion by DNRC served its notice purpose.

Recommendations

Stock claim 41F 107251-00 should be modified as follows to accurately reflect historical use.

TYPE OF HISTORICAL RIGHT: ~~USE~~ **DECREED**

Irrigation claim 41F 107293-00 accurately reflects historical use. No changes to the elements of the claim should be made.

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.

Service via Electronic Mail

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Electronically Signed By:
Hon. Judge Anna Stradley
Thu, Oct 15 2026 10:40:30 AM

POST DECREE

ABSTRACT OF WATER RIGHT CLAIM

MADISON RIVER

BASIN 41F

Water Right Number: **41F 107251-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MONTANA, STATE OF UNIVERSITY SYSTEM (MSU)
OFFICE OF LEGAL COUNSEL
MSU, 211 MONTANA HALL
PO BOX 172420
BOZEMAN, MT 59717-2420

Priority Date: APRIL 1, 1869

Type of Historical Right: DECREED

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: HOT SPRINGS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		E2	14	3S	1W	MADISON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		N2	13	3S	1W	MADISON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		S2	7	3S	1E	MADISON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		S2	8	3S	1E	MADISON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		SW	9	3S	1E	MADISON
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:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			E2	14	3S	1W	MADISON
2			N2	13	3S	1W	MADISON
3			S2	7	3S	1E	MADISON
4			S2	8	3S	1E	MADISON
5			SW	9	3S	1E	MADISON

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.

107251-00 107293-00

POST DECREE

ABSTRACT OF WATER RIGHT CLAIM

MADISON RIVER

BASIN 41F

Water Right Number: **41F 107293-00** STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: ACTIVE

Owners: MONTANA, STATE OF UNIVERSITY SYSTEM (MSU)
OFFICE OF LEGAL COUNSEL
MSU, 211 MONTANA HALL
PO BOX 172420
BOZEMAN, MT 59717-2420

Priority Date: APRIL 1, 1869

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 224.40 GPM

***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: 130.00

Source Name: HOT SPRINGS CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NESWSE	16	3S	1W	MADISON

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
2		SENENW	13	3S	1W	MADISON

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: PUMP

Period of Use: APRIL 15 TO OCTOBER 15

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	90.00		SW	14	3S	1W	MADISON
2	12.00		S2S2	12	3S	1W	MADISON
3	28.00		N2SE	12	3S	1W	MADISON
Total:	130.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

107276-00 107293-00

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.

107251-00 107293-00

2ND POD DOES NOT EQUAL POD ON AUTHORIZATION NENWNW.

FILE REFLECTS AUTHORIZATION ISSUED 05/24/1977 EXCEPT CL01 SEE 41F 107276-00 AUTHORIZATION TO CHANGE ISSUED 04/26/1989 FOR CHANGE IN POINT OF DIVERSION AND PLACE OF USE COMPLETED 10/23 -/1991 FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE. SEE 41F 107293-00.