FILED
10/23/2026
Melissa Lockman
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41F-0314-R-2026
Stradley, Anna
3.00

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: Gerald Brush; Jolene Brush

CASE 41F-0314-R-2026
41F 30129617

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 30129617 appeared in the Preliminary Decree with the following

issue remarks:

> THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41F TEMPORARY PRELIMINARY DECREE ISSUED 07/25/1984.
>
> THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

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.

Montana law requires the Water Court to resolve issue remarks. The point of diversion issue remark was not resolved through the objection process. 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 claimants, Jolene Brush and Gerald Brush, to file evidence resolving the point of diversion issue remark.

Jolene Brush and Gerald Brush filed a Statement of Clarification concerning the point of diversion.

Issues

1. What is the historically accurate point of diversion for stock claim 41F 30129617?

2. Are the issue remarks on stock claim 41F 30129617 resolved?

Findings of fact

1. The statement of claim identifies an undeveloped spring in the E2NE of Section 14, Township 3 South, Range 2 West, Madison County. The map attached to and in support of the statement of claim identifies a "creek" in the W2NW of Section 22, Township 3 South, Range 2 West, Madison County.

2. On August 12, 2026, Jolene Brush and Gerald Brush filed a Statement of Clarification. The Statement of Clarification confirms the claim is for an undeveloped spring in the NENE of Section 14, Township 3 South, Range 2 West, Madison County.

3. The historically accurate point of diversion and place of use for stock claim 41F 30129617 is the NENE of Section 14, Township 3 South, Range 2 West, Madison County.

Principles of law

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

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. A clerical mistake or mistake arising from omission or oversight may be

corrected by the court at any time. Rule 60(a), M.R.Civ.P.

Analysis

Issues 1 and 2 – point of diversion and issue remark resolution

Claimants confirmed that the claim was for an undeveloped spring in the NENE of Section 14, Township 3 South, Range 2 West, Madison County, further refining the legal land description identified by the claim. Clerical errors may be corrected at any time. The prima facie statement of claim indicates the place of use is the same as the point of diversion. Therefore, the place of use legal land description should be corrected to match the refined point of diversion legal land description.

The claim appeared in the Preliminary Decree with the following issue remark:

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

Water users were given the opportunity to review the claim and file an objection. The deadline to file objections expired. No objections were filed to the claim.

Conclusions of law

The proposed modified legal land description for the point of diversion is a refinement within the parameters of statement of claim 41F 30129617, justifies the modification to the claim, and resolves the point of diversion issue remark on the claim.

Clerical errors may be corrected at any time. The place of use should be corrected to match the point of diversion for this livestock direct from source claim.

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

Recommendations

Stock claim 41F 30129617 should be modified as follows to accurately reflect historical use.

POINT OF DIVERSION AND PLACE OF USE:

ID	GOVT LOT	QTR SEC	SEC	TWP	RGE	COUNTY
	NENE	~~E2NE~~	14	3S	2W	MADISON

The issue remarks 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

Gerald Brush
Jolene Brush
PO Box 2903
Norris, MT 59745-2903

Electronically Signed By:
Hon. Judge Anna Stradley
Fri, Oct 23 2026 01:29:51 PM

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

Water Right Number: **41F 30129617** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: GERALD BRUSH
PO BOX 2903
NORRIS, MT 59745-2903

JOLENE BRUSH
PO BOX 2903
NORRIS, MT 59745

***Priority Date:** DECEMBER 31, 1865

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: SPRING, UNNAMED TRIBUTARY OF PONY GULCH

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NENE	14	3S	2W	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			NENE	14	3S	2W	MADISON