

Montana Water Court
P.O. 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

* * * * *

CLAIMANT: Troutdale Association

OBJECTOR: Troutdale Association

CASE 41F-0520-R-2025

41F 39164-00

41F 39166-00

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

FINDINGS OF FACT

1. Troutdale Association is the record holder of 41F 39164-00 and 41F 39166-00.

2. Claims 41F 39164-00 and 41F 39166-00 both received issue remarks. Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination. 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.

3. **41F 39164-00:** This claim received the following notice-based issue remark:

POINT OF DIVERSION AND DITCH 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.

No objection was filed; therefore, these elements should remain as they appear on the abstract.

4. **Claim 41F 39166-00:** This claim received the following two issue remarks:

A LATE OBJECTION HAS BEEN FILED TO THE POINT OF DIVERSION AND MEANS OF DIVERSION OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

This issue remark is a late objection issue remark. On November 7, 1988, this claim received a late objection from Troutdale Assn when it was owned by Paul W. Tillinger. The claim is now owned by late objector Troutdale Assn. The late objection concerned the point of diversion and means of diversion.

5. This late objection and attached affidavit states that the place of use on claim 41F 39166-00 should be modified to match the point of diversion. This would appear as:

Place of Use:								
<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
1			S2NE	SWNE	4	5S	1W	MADISON
2				SENE	4	5S	4W	MADISON
3				NWNWSE	4	5S	1W	MADISON

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed on a claim. Section 85-2-248, MCA.

2. 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 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.

3. Because the modifications to the original claim in this proceeding did not constitute challenges to the prima facie status of the claim, the burden of proof does not apply, this modification is merely a consolidation of the prima facie place of use of the claim.

RECOMMENDATIONS

1. The place of use 41F 39166-00 should be modified as follows:

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			S2NE SWNE	4	5S	1W	MADISON
2			SENE	4	5S	1W	MADISON
3			NWNWSE	4	5S	1W	MADISON

2. Claims 41F 39164-00 and 41F 39166-00 should have their issue remarks removed.

Abstracts are attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Troutdale Association
% Bonnie Hernandez
PO Box 214
Ennis, MT 59729

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

Water Right Number: 41F 39164-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: TROUTDALE ASSN
% BONNIE HERNANDEZ
PO BOX 214
ENNIS, MT 59729

Priority Date: JUNE 1, 1936

ON 10/26/1995 TROUTDALE AND JAMES E. ROBERTSON FILED A STIPULATION WHICH SPECIFIES THAT "THE OWNER OF THIS RIGHT HAS AGREED TO SUBORDINATE THIS RIGHT TO ALL EXISTING RIGHTS ON THE SOURCE OF SUPPLY OWNED BY JAMES E. ROBERTSON AND HIS SUCCESSORS. 'EXISTING RIGHTS' MEANS ALL WATER RIGHTS ON THE SOURCE OF SUPPLY CONFIRMED IN THE NAME OF JAMES E. ROBERTSON OR HIS SUCCESSORS BY THE TERMS OF THIS DECREE FOR THE MADISON RIVER AND ITS TRIBUTARIES, AND ANY STOCKWATERING RIGHTS EXERCISED DIRECTLY FROM THE SOURCE OF SUPPLY WITHOUT DIVERSION WITH A PRIORITY DATE SENIOR TO JULY 1, 1973. THE OWNER OF RIGHT 41F-W-039164-00 SHOULD NOT MAKE A CALL FOR WATER ON THE SOURCE OF SUPPLY AS AGAINST JAMES E. ROBERTSON AND HIS SUCCESSORS FOR ANY OF THESE EXISTING RIGHTS."

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 2.96 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: 78.00

Source Name: SPRING BRANCH CREEK

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		NWNWSE	4	5S	1W	MADISON

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: TILLINGER DITCH

2		SESWNE	4	5S	1W	MADISON
---	--	--------	---	----	----	---------

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: MAY 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	5.00		SESWNE	4	5S	1W	MADISON
2	5.00		NESENE	4	5S	1W	MADISON
3	18.00		S2SENE	4	5S	1W	MADISON
4	40.00		NESE	4	5S	1W	MADISON
5	10.00		E2NWSE	4	5S	1W	MADISON
Total:							
	78.00						

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

Water Right Number: 41F 39166-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: TROUTDALE ASSN
% BONNIE HERNANDEZ
PO BOX 214
ENNIS, MT 59729

Priority Date: OCTOBER 1, 1893

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 BRANCH CREEK

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		S2NE	4	5S	1W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		NWNWSE	4	5S	1W	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:

<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			S2NE	4	5S	1W	MADISON
2			NWNWSE	4	5S	1W	MADISON