

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

* * * * *

CLAIMANT: Mary T. Van Zandt

CASE 41F-0524-R-2025

41F 132094-00

OBJECTORS: United States, DOA Forest Service; United
States, DOI Bureau of Reclamation

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. Claimant Mary T. Van Zandt ("Claimant") is the record owner of claim 41F 132094-00.

2. The United States of America DOI Bureau of Reclamation filed an objection to the flow rate, volume, priority date, place of use, and maximum acres noting that the 1954 Madison County Water Resources Survey (WRS) showed fewer acres irrigated than claimed.

3. The United States of America DOA Forest Service filed an objection to the place of use, stating that the places of use in Section 9, Township 4S, Range 2 W, were upstream of the point of diversion and that the WRS showed “no irrigation”.

4. 41F 132094-00 received the following issue remark:

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

All claims included in the Decree were subject to pre-decree examination by the Montana Department of Natural Resources and Conservation (“DNRC”). If during claims examination the DNRC cannot confirm some aspect of a claim, an issue remark is added to the claim for review by the Water Court.

5. On May 5, 2026, Claimant was ordered to attend a status conference on April 22, 2026. (Doc.¹ 1.00). Present were attorneys Romney S. Philpott for objector the United States of America, DOA Forest Service and DOI Bureau of Reclamation. Claimant Mary T. Van Zandt did not appear. (Doc. 2.00).

6. During the conference a Rule 22 motion was made. Pursuant to Rule 22, W.R.Adj.R., when a claimant fails to comply with an Order issued by the Water Court, including an order issued by a Water Master appointed by the Court, the Court, upon motion, or its own initiative, can among other actions: 1) amend the elements of the claim to conform with the information in the claim file, information obtained by the Court, or information included in an objection or 2) terminate the claim.

7. The record did not include evidence supporting the requested sanction. United States of America on behalf of the Bureau of Reclamation and Forest Service was ordered to file evidence in support of its requested sanction.

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

8. On August 5, 2026, the United States of America on behalf of the Bureau of Reclamation and Forest Service filed a Response to Court Order. (Doc. 5.00). Included in the response was a memorandum entitled *Declaration of Kraig S. Van Voast* detailing the abandonment claim. This declaration was created by Kraig S. Van Voast, a Water Rights Specialist with the DOI Bureau of Reclamation.

9. Mr. Van Voast, utilized the 1954 Madison County Water Resource Survey (“WRS”) Report, as well as aerial imagery from 1976, 1995, 2005, 2009, 2013, 2019, and 2021.

8. Mr. Van Voast, in the declaration, states that it appears that the water right was never perfected, or that the claimed water right has been abandoned for at least 40 years. Aerial imagery shows 0.00 acres of irrigation in the claimed place of use, and the WRS report shows that no irrigation is associated with the claim. Further, the declaration states that the published WRS clearly indicates that the only ditch system in the vicinity is in lower elevation than claimed place of use and that water could not be conveyed from the point of diversion to claimed place of use.

9. On August 19, 2026, the Court issued an order setting a show cause filing deadline. This order contained the following language:

Pursuant to Rule 22, W.R.Adj.R., it is

ORDERED that claimant **Mary T. Van Zandt** must now file evidence sufficient to **SHOW CAUSE** why claim 41F 132094-00 should not be dismissed.

Mary T. Van Zandt’s evidence must be filed with the Montana Water Court no later than **September 24, 2026**.

ORDERED that Mary T. Van Zandt’s failure to comply with this filing deadline will be viewed as agreement that the water right has been abandoned and the claim should be dismissed.

(Doc. 6.00). No evidence or response was filed.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark against the claimed water right. Section 85-2-247(2), MCA.

8. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

9. Sanctions applied against a claimant may include modification of a claim to conform with data provided by the DNRC, information obtained by the Court, or information included in an objection, or the entry of default and termination of a water right claim. Rule 11, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The evidence provided in the Van Voast declaration overcomes the prima facie status of claim 41F 132094-00 overcomes the prima facie status of the claim file. Claimant failed to provide evidence of any historical irrigation.

RECOMMENDATIONS

Claim 41F 132094-00 should be dismissed.

A post decree abstract of the water right claims reflecting the recommendations is attached to this Report.

Service via USPS Mail

Mary T. Van Zandt

Mail Undeliverable

(Returned Mail received 8-7-2026)

Service via Electronic Mail

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

Water Right Number: 41F 132094-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Owners: MARY T VAN ZANDT
PO BOX 355
MCALLISTER, MT 59740-0355

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: SAW LOG CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.