

Montana Water Court
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FILED
JAN 03 2014

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MADISON RIVER BASIN (41F)

CLAIMANT: Alton Living Trust

CASE 41F-A4
41F 5962-00

Unconsolidated Claim:
41F 214412-00

**ORDER AMENDING CLAIM 41F 5962-00
AND
ORDER DISMISSING CLAIM 41F 214412-00**

PROCEDURAL HISTORY

Case 41F-A4 includes a single claim, 41F 5962-00, filed for irrigation from Moran Creek. The case originated with a Motion to Amend the claim filed by the Claimant in 2004. The Claimant complied with the notice requirement found in Section 85-2-233(6), MCA, and received no objections to the motion.

On July 18, 2006, the Senior Water Master presiding over the case issued a Master's Report recommending that the Water Court deny the motion. The Claimant objected to the Master's Report and filed a brief supporting the objection on September 29, 2006. On September 18, 2013, the case was assigned to the Associate Water Judge, who ordered the Claimant to file a response addressing the current status of the case.

On October 31, 2013, Claimant filed a response renewing its Objection to the 2006 Master's Report and renewing its request for hearing. The stated purpose of the requested hearing was to provide an opportunity for the Claimant to address any specific questions that the Court may have concerning the evidence and arguments presented in support of its Objection to the 2006 Master's Report and its original Motion to Amend. Because the current record is sufficient to address the objection, the Court finds that a hearing is unnecessary.

FACTUAL BACKGROUND

Claimant is the current owner of the former Thextondale Ranch. Claimant's predecessors filed a statement of claim for a right to store water in a reservoir in the Moran Creek drainage known as Twin Lake East. Twin Lake East is one of three naturally occurring lakes – known as the Axolotl Lakes – in the headwaters of Moran Creek in Sections 8, 9, and 17, Township 7 South, Range 2 West, Madison County. Stored water from the three lakes is released into Moran Creek, which is used as a natural carrier to convey water to points of diversion downstream for irrigation purposes on Claimant's lands.

The level of the Axolotl Lakes was raised by dams constructed by Claimant's predecessors beginning in the 1920s. The reservoirs were first constructed by the Thexton family in 1924 and consisted of: 1) Axolotl Lake; 2) Reservoir Lake; and 3) Twin Lake East. In 1935 or 1936, Reservoir Lake was expanded to approximately seven acres. From 1946 to 1947, the surface areas of Axolotl and Twin Lakes were increased to surface areas of approximately 14 acres and 15 acres respectively.

In approximately 1993, Claimant discovered that the water right claims filed by its predecessors did not include a claim for storage in Axolotl Lakes. Thus, on December 22, 1993, Claimant filed late claim 41F-W-214412-00 for storage in all three reservoirs in the Axolotl Lake system. Claimant also filed late objections to three of its other Moran Creek irrigation claims (41F 122700-00, 41F 122702-00 and 41F 122698-00) to include the Axolotl Lake system.

In 1999, Claimant purchased another portion of the original Thextondale Ranch. A water right ownership update was filed on May 26, 1999 transferring claim 41F 5962-00 to Claimant. On January 27, 2004, Claimant filed its Motion to Amend pursuant to Mont. Code Ann. § 85-2-233(6) and Rule 15(c) Mont. R. Civ. P. Claimant requested permission to amend the claim to accurately reflect all components of the Axolotl Lakes reservoir system historically used for irrigation of Claimant's land. Claimant complied with the notice requirement found in Section 85-2-233(6), MCA, and received no objections to the motion.

On August 23, 2005, the Senior Water Master issued an order stating that:

[I]t appears that the requested amendment is to change the claimed right to a different right, an amendment that would not relate to the same "conduct transaction or occurrence set forth or attempted to be set forth in the original

pleading.” Rule 15(b) Mont. R. Civ. P. It appears the “original pleading”, the Statement of Claim, is for the later water right appropriated when the dam level was raised and the Motion to Amend concerns the previous appropriation when the reservoir was constructed.

Order Setting Hearing on Motion to Amend, p.1. The Water Master set a hearing to address the issue.

On January 6, 2006, Claimant filed a Supplemental Brief in Support of its Motion to Amend along with the supplemental affidavit of Donald O. Thexton, the son of Claimant’s predecessors. Together, the original and supplemental affidavits of Donald Thexton state that the Thexton family’s construction and improvement of the reservoir system took place over a period of approximately 23 years, from 1924 to 1947. During this period and continuing through today, the water from the reservoir system was mixed and used as a single supplemental storage supply for release into Moran Creek.

Claimant also revised its Motion to Amend to request a priority date of 1947. According to Claimant’s supporting affidavits, this date more accurately reflects a single priority date for the completion of the entire reservoir system.

On July 18, 2006, the Water Master issued a Master’s Report denying the Motion to Amend on the grounds that the requested amendment did not arise out of the same conduct, transaction or occurrence as the water right claimed in 41F 5962-00, and therefore did not relate back to the filing of the claim. The Master reasoned that the original claim was “for the water right appropriation facilitated by the building of a specific dam which thereby caused the impoundment of water and the formation of a reservoir.” *Master’s Report* at 9. Thus, an amendment to add additional reservoirs and storage rights would be inappropriate because it would go beyond the same conduct, transaction or occurrence that resulted in claim 41F 5962-00.

Claimant objected to the Master’s Report, citing numerous errors in the Master’s reasoning. Claimant insisted that the requested amendment should be allowed because the amendment arises from the same conduct, transaction or occurrence as the original claim. Claimant further argued that the Master’s decision undermines the purpose of the Motion to Amend statute, violates the rules of statutory construction, and contradicts the

Water Court's historical practice.

STANDARD OF REVIEW

This Court has jurisdiction over all matters relating to the determination of existing water rights. § 3-7-224, MCA. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 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 the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

The Rules of Civil Procedure require this Court to accept a Master's Findings of Fact unless clearly erroneous. M. R. Civ. P. 53(e)(2) The Montana Supreme Court follows a three-part test to determine if the findings of fact of a trial court are clearly erroneous. *See Interstate Production Credit Assn. v. DeSaye*, 250 Mont. 320, 323, 820 P.2d 1285, 1287 (1991). This Court uses a similar test for reviewing objections to a Master's Findings of Fact. Rule 11(c), W.R.Adj.R. First, this Court reviews the record to see if the findings are supported by substantial evidence. Substantial evidence is evidence which a reasonable mind might accept as adequate to support a conclusion, even if the evidence is weak or conflicting. *Arnold v. Boise Cascade Corp.*, 259 Mont. 259, 265, 856 P.2d 217, 220 (1993) (internal citations omitted). Second, if the findings are supported by substantial evidence, this Court then determines whether the Master has misapprehended the effect of the evidence. Third, if substantial evidence exists and the effect of the evidence has not been misapprehended, this Court may still determine that a finding is clearly erroneous when, although there is evidence to support it, a review of the record leaves the Court with the definite and firm conviction that a mistake has been committed. This Court also reviews a Master's conclusions of law to determine whether they are correct. *Geil v. Missoula Irr. Dist.*, 2002 MT 269, ¶ 22, 312 Mont. 320, 59 P.3d 398.

DISCUSSION

Pursuant to § 85-2-233(6), MCA, claimants may file motions to amend their own

claims. “A motion to amend must specify the requested amendment and the grounds for such amendment. Upon review, the water court will determine the notice required pursuant to § 85-2-233(6), MCA, and issue an appropriate order.” Rule 10, W.R. Adj. R.

Rule 15(a)(2), Mont. R. Civ. P. states that “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” The rule further states that “[a]n amendment to a pleading relates back to the date of the original pleading when ... the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading.” Mont. R. Civ. P. 15(c)(1)(B),

“[I]f the original pleading gives fair notice of the general fact situation out of which the claim or defense arises, an amendment which merely makes more specific what has already been alleged ... or remedies a defective pleading, will relate back” *Prentice Lumber Co. v. Hukill* (1972), 161 Mont. 8, 15, 504 P.2d 277, 281 (citing 3 *Moore’s Federal Practice* § 15.15(3), at 1025-27). In other words, “an amended complaint relates back to the date of the original pleading when the amended pleading depends on the same set of operative facts as contained in the original pleading.” *Sooey v. Petrolane Steel Gas, Inc.* (1985), 218 Mont. 418, 422-23.

Here, Claimant desires to take the general fact situation out of which claim 41F 5962-00 arose and amend the claim to reflect a more accurate picture of the historical beneficial use of the entire Axolotl Lake reservoir system. The ostensible purpose for this amendment is to remedy the fact that Claimant’s predecessors failed to include storage rights for the entire reservoir system in their water right claims. Thus, the Claimant is now stuck with late claims that will likely include a far more junior priority date than would have otherwise been assigned.

The problem with Claimant’s Motion to Amend, as recognized in the 2006 Master’s Report, is that the original Statement of Claim only appears to reference one storage right in one reservoir – Twin Lake East. *Master’s Report* at 5. The Statement of Claim describes a March 16, 1930 use right for 100 miner’s inches, 675 acre-feet per year

diverted from Twin Lake, carried by ditch to Moran Creek and diverted through two points of diversion at the 158 acre place of use. *Id.* There is no mention of a system involving three reservoirs. The affidavit of William G. Thexton that was attached to the Statement of Claim only supports the contents of claim 41F 5962-00. A map attached to the Statement of Claim does show the Axolotl Lake system, but only Twin Lake is identified and marked as the point of diversion. *Id.*

The Claimant insists that the Master has confused the *actual* claim with the operative facts that *give rise* to the claim. *Brief in Support of Objection to Master's Report* at 8 (*Claimant's Brf.*). The Master concluded that the operative facts giving rise to this claim are specific, i.e. those facts found in the Statement of Claim itself and its attachments. *Master's Report* at 5. On the other hand, the Claimant argues that the operative facts giving rise to the claim are more general; i.e. facts that "relate to the appropriation of storage water by the Thexton family in the Moran Creek drainage." *Claimant's Brf.* at 7. More recent evidence submitted by the Claimant, including the affidavits of Donald Thexton, does support the historical use of all three reservoirs to store and divert water in the Moran Creek drainage. However, the Master did not find this evidence persuasive because it was not found in the original Statement of Claim. While the Master's Report does present valid concerns related to the application of Rule 15(c), Mont. R. Civ. P., the Court finds that the Master overlooked the purpose behind the amendment statute itself.

Rule 15(a), Mont. R. Civ. P., states that a court should freely give leave to amend "when justice so requires." Claimant notes that the related requirements of Rule 15(c) are generally designed to ensure that parties have sufficient notice of claims brought against them. *Claimant's Brf.* at 9. However, Rule 15(c) also places some emphasis on the period provided by law for commencing the action itself. See, e.g., *Kilkenny v. Arco Marine Inc.*, 800 F.2d 853, 857-58 (9th Cir. 1986). While this requirement makes sense in the broader context of promoting timely filings against civil defendants, the rule's application to water right claims is somewhat problematic. Thus, the requirements of Rule 15(c) should be examined in conjunction with § 85-2-233(6), MCA.

Mont. Code Ann. § 85-2-233(6) was enacted to allow water right claimants to amend their claims *after* a preliminary decree has been issued. The objective of the statute is to allow amendments so that water right claims are “decided on their merits rather than on procedural grounds.” *Report of the Water Adjudication Advisory Committee*, at 8 (Oct. 1, 1996). To ensure other parties are not injured by such amendments, the statute includes strict notice requirements. In this case, the Claimant has fully complied with the notice requirements. Water users in the Madison River Basin as well as Claimants of Moran Creek water have received full notice of the Motion to Amend. The requested amendments have not received any objections.

Further, as a practical matter, the evidence before the Court supports the amendments. The affidavits of Donald Thexton sufficiently show a historical beneficial use of the combined storage water from the three reservoirs built, improved and maintained by the Thexton family. These water rights should be recognized. The question is whether the rights will be added to the current claim and receive a 1947 priority date or filed as late claims with a far later priority date. In this case, justice requires that the Claimant be allowed to amend the claim to reflect the historical beneficial use of the Axolotl Lake reservoir system. It is therefore

ORDERED that late claim 41F 214412-00 be dismissed, as it would be duplicative of the current claim.

ORDERED that claim 41F 5962-00 be amended as follows:

Claim 41F 5962-00

Priority Date: ~~MARCH 16, 1930~~ DECEMBER 31, 1947

Irrigation Type: ~~SPRINKLER~~ SPRINKLER/FLOOD

Maximum Flow Rate: ~~1.14 CFS~~

A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS RESERVOIR SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Maximum Volume: ~~216.00 AC-FT~~ 360 AC-FT

Maximum Acres: ~~30.00~~ 282.20

Source Type: SURFACE WATER

ADD: SOURCE IS COMPOSED OF THREE NATURAL LAKES THAT HAVE HAD WATER LEVELS RAISED BY MANMADE DAMS. THESE LAKES ARE GENERALL REFERRED TO AS THE AXOLOTL LAKES.

POINT OF DIVERSION NUMBERS 02 AND 03 ARE ON UNNAMED TRIBUTARIES OF MORAN CREEK.

Points of Diversion and Means of Diversion:

<u>ID</u>	<u>Gov Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNWSW	9	7S	2W	MADISON
1		NESWNE	17	7S	2W	MADISON

Source Name: MORAN CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

Reservoir Name: AXOLOTL LAKE

<u>Gov Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESWNE	17	7S	2W	MADISON

Diversion to Reservoir: DIVERSION #1

Dam Height: 14.00 FEET

Surface Area: 14.00 ACRES

Capacity: 140.00 ACRE-FEET

2		NWSWSE	8	7S	2W	MADISON
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Source Name: UNNAMED TRIBUTARY OF MORAN CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

Reservoir Name: RESERVOIR LAKE

<u>Gov Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSWSE	8	7S	2W	MADISON

Diversion to Reservoir: DIVERSION #2

Dam Height: 12.00 FEET

Surface Area: 7.00 ACRES

Capacity: 70.00 ACRE-FEET

3		NWNWSW	9	7S	2W	MADISON
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Source Name: UNNAMED TRIBUTARY OF MORAN CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DAM

MORAN CREEK IS USED AS A NATURAL CARRIER TO CONVEY WATER RELEASED FROM AXOLOTL LAKE, RESERVOIR LAKE AND TWIN LAKE EAST, TO SECONDARY POINTS OF DIVERSION IN THE SENWSE SEC 36, TWP 6S, RGE 2W AND NWNWSW SEC 31, TWP 6S, RGE 1W MADISON COUNTY.

Reservoir: ONSTREAM **Reservoir Name:** TWIN LAKE EAST

<u>Gov Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNWSW	9	7S	2W	MADISON

Diversion to Reservoir: DIVERSION #3
Dam Height: 14.00 FEET
Surface Area: 15.00 ACRES
Capacity: 150.00 ACRE-FEET

Period of Use: ~~APRIL 1 TO AUGUST 19~~ MAY 15 TO AUGUST 31

THE PERIOD OF STORAGE IS YEAR ROUND. THE PERIOD OF RELEASE IS MAY 15 THROUGH AUGUST 31.

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Gov't Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	30.00		SE	36	6S	2W	MADISON
1	2.50		SESESE	19	6S	1W	MADISON
2	6.00		SWSWSW	20	6S	1W	MADISON
3	34.00		W2NW	29	6S	1W	MADISON
4	6.00		W2NWSW	29	6S	1W	MADISON
5	65.00		NE	30	6S	1W	MADISON
6	100.00		SE	30	6S	1W	MADISON
7	38.70		SW	30	6S	1W	MADISON
8	30.00		SE	36	6S	2W	MADISON

Total: ~~30.00~~ 282.20

Remarks:

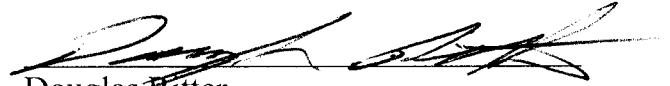
THE WATER RIGHTS FOLLOWING THIS STATEMENT CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS OF THE CLAIMANT'S TOTAL 282.20 ACRES. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE: 41F 122700-00, 41F 122701-00, 41F 122702-00, 41F-122703-00, 41F 122704-00, 41F 5962-00.

CONCLUSION

Claim 41F 5962-00 is amended to reflect the changes outlined above, and late claim

41F 214412-00 is hereby dismissed. A Post Decree Abstract of Water Right Claim, for each claim addressed in this Report, is served with the Report to confirm that the amendments have been made in the state's centralized water right record system.

DATED this 3 day of JANUARY 2012.4



Douglas Ritter
Associate Water Judge

Michael J. L. Cusick
Moore, O'Connell & Refling, P.C.
PO Box 1288
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(406) 587-5511
morlaw@qwestoffice.net

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM**

**MADISON RIVER
BASIN 41F**

IMPORTANT NOTICE

AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.

Water Right Number: 41F 5962-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: ALTON LIVING TRUST
% N KIRBY & JANICE M ALTON, TRUSTEES
815 COUNTRY VALLEY RD
THOUSAND OAKS, CA 91362 5637

***Priority Date:** DECEMBER 31, 1947

Type of Historical Right: USE

***Purpose (use):** IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS RESERVOIR SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** 360.00 AC-FT

Climatic Area: 5 - LOW

***Maximum Acres:** 282.20

***Source Name:** MORAN CREEK

Source Type: SURFACE WATER

***Source Name:** UNNAMED TRIBUTARY OF MORAN CREEK

Source Type: SURFACE WATER

SOURCE IS COMPOSED OF THREE NATURAL LAKES THAT HAVE HAD WATER LEVELS RAISED BY MANMADE DAMS. THESE LAKES ARE GENERALLY REFFERRED TO AS THE AXOLOTL LAKES.

POINT OF DIVERSION NUMBERS 02 AND 03 ARE ON UNNAMED TRIBUTARIES OF MORAN CREEK.

***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		NESWNE	17	7S	2W	MADISON

Source Name: MORAN CREEK

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

***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>
2		NWSWSE	8	7S	2W	MADISON

Source Name: UNNAMED TRIBUTARY OF MORAN CREEK

*Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

3		NWNWSW	9	7S	2W	MADISON
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*Source Name: UNNAMED TRIBUTARY OF MORAN CREEK

*Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

MORAN CREEK IS USED AS A NATURAL CARRIER TO CONVEY WATER RELEASED FROM AXOLOTL LAKE, RESERVOIR LAKE AND TWIN LAKE EAST, TO SECONDARY POINTS OF DIVERSION IN THE SENWSE SEC 36, T6S, R2W, AND NWNWSW SEC 31, T6S, R1W MADISON COUNTY.

*Reservoir: ONSTREAM Reservoir Name: AXOLOTL LAKE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESWNE	17	7S	2W	MADISON

Diversion to Reservoir: DIVERSION # 1

Dam Height: 14.00 FEET

Surface Area: 14.00 ACRES

Capacity: 140.00 ACRE-FEET

*Reservoir: ONSTREAM Reservoir Name: RESERVOIR LAKE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSWSE	8	7S	2W	MADISON

Diversion to Reservoir: DIVERSION # 2

Dam Height: 12.00 FEET

Surface Area: 7.00 ACRES

Capacity: 70.00 ACRE-FEET

*Reservoir: ONSTREAM Reservoir Name: TWIN LAKE EAST

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNWSW	9	7S	2W	MADISON

Diversion to Reservoir: DIVERSION # 3

Dam Height: 14.00 FEET

Surface Area: 15.00 ACRES

Capacity: 150.00 ACRE-FEET

*Period of Use: MAY 15 TO AUGUST 31

THE PERIOD OF STORAGE IS YEAR ROUND, THE PERIOD OF RELEASE IS MAY 15 THROUGH AUGUST 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	2.50		SESESE	19	6S	1W	MADISON
2	6.00		SWSWSW	20	6S	1W	MADISON
3	34.00		W2NW	29	6S	1W	MADISON
4	6.00		W2NWSW	29	6S	1W	MADISON
5	65.00		NE	30	6S	1W	MADISON
6	100.00		SE	30	6S	1W	MADISON
7	38.70		SW	30	6S	1W	MADISON

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
8	30.00		SE	36	6S	2W	MADISON	
Total:	282.20							

Remarks:

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

THE WATER RIGHTS FOLLOWING THIS STATEMENT CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS OF THE CLAIMANT'S TOTAL 282.20 ACRES. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE: 41F 122700-00, 41F 122701-00, 41F 122702-00, 41F 122703-00, 41F 112704-00, 41F 5962-00.

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

IMPORTANT NOTICE

*****THIS WATER RIGHT CLAIM HAS BEEN DISMISSED*****

AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.

Water Right Number: 41F 214412-00 STATEMENT OF CLAIM

Version: 3 -- ORIGINAL RIGHT

Status: **DISMISSED**

Late Claim: B

Owners: ALTON LIVING TRUST
% N KIRBY & JANICE M ALTON, TRUSTEES
815 COUNTRY VALLEY RD
THOUSAND OAKS, CA 91362 5637

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF MORAN CREEK

Source Type: SURFACE WATER

Source Name: MORAN CREEK

Source Type: SURFACE WATER

Source Name: UNNAMED TRIBUTARY OF MORAN 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 DURING ADJUDICATION OF THE 41F TEMPORARY PRELIMINARY DECREE.