

41M-0210-P-2017

September 20, 2021

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
TWO MEDICINE RIVER – BASIN 41M

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CLAIMANTS: Cheryl S. Curry; Gene R. Curry; Pondera County  
Canal & Reservoir Co.

CASE 41M-0210-P-2017

41M 131103-00

41M 199796-00

OBJECTORS: Pondera County Canal & Reservoir Co.; United  
States of America (Bureau of Indian Affairs)

NOTICE OF INTENT TO APPEAR: Blackfeet Tribe; Gene R.  
Curry

**ORDER INCORPORATING TERMS OF SETTLEMENT AGREEMENTS AND  
CLOSING CASE**

**I. INTRODUCTION**

Water right claim 41M 131103-00 is owned by Cheryl S. and Gene R. Curry.

Claim 41M 199796-00 is owned by Pondera County Canal & Reservoir Co. (“PCCRC”).

For 41M 131103-00, PCCRC objected. For 41M 199796-00, PCCRC and the United States (Bureau of Indian Affairs) (“BIA”) objected, Daryle E. Swanson counterobjected, and Gene R. Curry and the Blackfeet Tribe filed an NOIA.

The Court dismissed Swanson during the August 2, 2021 pretrial conference as a sanction for failure to appear at the pretrial conference and failure to file a proposed pretrial order.

On October 16, 2020, PCCRC and Curry filed a Mediation Settlement Agreement. The Court issued an order approving the October 16 settlement agreement on October 21, 2020.

On August 12, 2021, the BIA, the Blackfeet Tribe, and PCCRC filed a Stipulation to Resolve Objections which addressed 41M 199796-00. The Court issued an order approving the August 12 stipulation on August 13, 2021.

## II. ANALYSIS

### *October 16 Mediation Settlement Agreement*

The October 16 agreement proposes changes to the point of diversion legal description (for the Ryan-Lauffer Ditch) for 41M 131103-00 and 41M 199796-00. For 41M 131103-00, the parties request the addition of an information remark referencing a distribution agreement. For 41M 199796-00, the parties request the addition of information remarks clarifying this claim's use of Swift Reservoir and referencing use of water approved through a DNRC Change Authorization. The agreement also proposes a reduction in the flow rate for 41M 199796-00 from 18.75 CFS to 9.375 CFS.

The October 16 agreement resolves PCCRC's objection to 41M 131103-00 and Curry's NOIA on 41M 199796-00.

The flow rate and acres irrigated issue remarks on 41M 131103-00 are resolved pursuant to the Order Amending and Partially Adopting Master's Report in WC-2006-01.

### *August 12 Stipulation*

The August 12 stipulation only addresses 41M 199796-00. The stipulation proposes reducing the flow rate to 9.375 CFS. This reduction is consistent with the reduction requested in the October 16 agreement.

The stipulation requests changes to the point of diversion legal description and means of diversion for the Ryan-Lauffer Ditch. The point of diversion legal description change is consistent with the change requested in the October 16 agreement.

The August 12 stipulation also requests information remarks be added regarding multiple use and supplemental relationships, and limitations to the diversion rate from the Ryan Lauffer Ditch<sup>1</sup>.

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<sup>1</sup> There are two different versions of the information remark limiting the combined diversion rate for water rights utilizing the Ryan Lauffer Ditch – one included in Agreement 9.c.iii. of the stipulation and one included in Exhibit 7 (41M 199796-00 proposed abstract) attached to the stipulation. Because the Agreements are part of the executed

The August 12 stipulation resolves PCCRC's and BIA's objections and the Blackfeet Tribe's NOIA for 41M 199796-00.

### III. CONCLUSION AND ORDER

The stipulations are approved. The issue remarks are resolved and removed. The requested changes have been made to both claims. The objections, counterobjections, and NOIAs are resolved. Claims 41M 131103-00 and 41M 199796-00 will appear in the Basin 41M Final Decree as shown on the post decree abstracts attached to this order.

This case is CLOSED.

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Russ McElyea  
Chief Water Judge

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stipulation, as opposed to an attachment to it, the Court used the version of this information remark contained in the Agreements section.

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
TWO MEDICINE RIVER  
BASIN 41M**

**Water Right Number:** 41M 131103-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
CHERYL S CURRY  
130 CURRY RD  
VALIER, MT 59486

GENE R CURRY  
130 CURRY RD  
VALIER, MT 59486

**Priority Date:** MAY 19, 1897

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 18.75 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:** 482.00

**Source Name:** BIRCH 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	4	NWNWNW	6	29N	7W	PONDERA

**Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** RYAN LAUFFER DITCH

**Period of Use:** APRIL 15 TO OCTOBER 15

**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	32.90		NENE	6	29N	6W	PONDERA
2	5.90		SENE	6	29N	6W	PONDERA
3	66.80		W2NE	6	29N	6W	PONDERA
4	4.80		E2NENW	6	29N	6W	PONDERA
5	54.50		S2NW	6	29N	6W	PONDERA
6	12.60		NWSE	6	29N	6W	PONDERA
7	2.40		W2SWSE	6	29N	6W	PONDERA
8	54.30		E2SW	6	29N	6W	PONDERA
9	17.00		W2SW	6	29N	6W	PONDERA

10	10.70	E2NESE	31	30N	6W	PONDERA
11	20.30	SESE	31	30N	6W	PONDERA
12	31.80	NE	32	30N	6W	PONDERA
13	27.90	SENW	32	30N	6W	PONDERA
14	10.50	SWNW	32	30N	6W	PONDERA
15	41.90	N2SE	32	30N	6W	PONDERA
16	4.60	S2SE	32	30N	6W	PONDERA
17	33.30	NESW	32	30N	6W	PONDERA
18	26.00	NWSW	32	30N	6W	PONDERA
19	3.00	SESW	32	30N	6W	PONDERA
20	20.80	SWSW	32	30N	6W	PONDERA
<b>Total:</b>	<b>482.00</b>					

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**Remarks:**

FILE REFLECTS AUTHORIZATION COMPLETED 10-22-82.

USE OF THIS WATER RIGHT IS SUBJECT TO A WATER DISTRIBUTION AGREEMENT ON FILE WITH THE WATER COURT IN CASE NO. 41M-0210-P-2017, AND THE NINTH JUDICIAL DISTRICT COURT, PONDERA COUNTY, CAUSE NO. DV-05-032.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
TWO MEDICINE RIVER  
BASIN 41M**

**Water Right Number:** **41M 199796-00** STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** PONDERA COUNTY CANAL & RESERVOIR CO  
PO BOX 245  
VALIER, MT 59486

**Priority Date:** MAY 19, 1897

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER

**Flow Rate:** 9.38 CFS

THE COMBINED DIVERSION RATE OF THE WATER RIGHTS LISTED BELOW FOR THE RYAN LAUFFER DITCH SHALL NOT EXCEED 18.75 CFS: 41M 42047-00, 41M 42051-00, 41M 48236-00, 41M 48237-00, 41M 162012-00, 41M 199796-00, 41M 199798-00, 41M 199805-00, 41M 199813-00, 41M 199817-00, 41M 199824-00

**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:** 267.60

**Source Name:** BIRCH CREEK

**Source Type:** SURFACE WATER

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

<b>ID</b>	<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1	4	NWNWNW	6	29N	7W	PONDERA

**Period of Diversion:** APRIL 20 TO OCTOBER 14

**Diversion Means:** HEADGATE

**Ditch Name:** RYAN LAUFFER DITCH

**Period of Use:** APRIL 20 TO OCTOBER 14

**Place of Use:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1	108.60		N2	2	29N	7W	PONDERA
2	159.00		S2	35	30N	7W	PONDERA
<b>Total:</b>	<b>267.60</b>						

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**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.

199796-00        199808-00

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.

199796-00        199813-00

THE WATER RIGHTS LISTED BELOW HAVE BEEN TEMPORARILY HELD IN SWIFT RESERVOIR FOR RE-REGULATION AND RELEASE IN BIRCH CREEK DIVERTED AT LOT 4, NWNWNW, SECTION 6, TOWNSHIP 29 NORTH, RANGE 7 WEST (RYAN/LAUFFER DITCH). 41M 42047-00, 41M 42051-00, 41M 48236-00, 41M 48237-00, 41M 199796-00, 41M 199798-00, 41M 199805-00, 41M 199813-00, 41M 199817-00, 41M 199824-00. AS PART OF THIS PRACTICE AT TIMES WATER STORED IN SWIFT RESERVOIR UNDER 41M 162012-00 MAY BE DELIVERED TO THE PLACE(S) OF USE DESCRIBED UNDER THESE RIGHTS.

USE OF WATER UNDER THIS RIGHT IS FURTHER DESCRIBED IN THE DNRC FINAL ORDER, CHANGE AUTHORIZATION NO. 41M G(W) 199792-00, DATED APRIL 18, 1995. UNDER THE FINAL ORDER THIS WATER RIGHT SHALL BE DISTRIBUTED BY THE PONDERA COUNTY CANAL AND RESERVOIR COMPANY AS STATED IN THE AGREEMENT DATED AUGUST 27, 1993.

THE COMPLETE SET OF DOCUMENTATION, MAPS, AND OTHER RELATED MATERIALS CAN BE OBTAINED BY REVIEWING THE CLAIM FILE, AND WATER COURT CASE NO. 41M-0210-P-2017.