

Montana Water Court
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41M-0230-P-2017

September 17, 2021

Montana Water Court

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

CLAIMANT: Pondera County Canal & Reservoir Co.

OBJECTOR: United States of America (Bureau of Indian Affairs)

NOTICE OF INTENT TO APPEAR: Blackfeet Tribe

CASE 41M-0230-P-2017
41M 199808-00
41M 199827-00

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

I. INTRODUCTION

Water right claims 41M 199808-00 and 41M 199827-00 are owned by Pondera County Canal & Reservoir Co. (“PCCRC”). For both claims, the United States (Bureau of Indian Affairs) (“BIA”) objected, Daryle E. Swanson counterobjected, and Gene R. Curry and the Blackfeet Tribe filed notices on intent to appear (“NOIA”). Both claims appeared in the 41M Preliminary Decree without issue remarks.

On April 14, 2021, Curry filed a withdrawal of his NOIA on both claims in this case. 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 August 6, 2021, the BIA, the Blackfoot Tribe, and PCCRC filed a Stipulation to Resolve Objections. The Court issued an order approving the stipulation on August 9, 2021.

II. ANALYSIS

41M 199808-00

The stipulation proposes the addition of a supplemental rights remark to 41M 199808-00. The stipulation does not request changes to any element of the claim.¹

41M 199827-00

The stipulation proposes reducing the priority date and amending the type of historical right, point of diversion, and place of use for 41M 199827-00.

The stipulation resolves BIA's objections and the Blackfoot Tribe's NOIAs for both claims.

III. CONCLUSION AND ORDER

The stipulation is approved. The requested changes have been made to both claims. The objections, counterobjections, and NOIAs are resolved. Claims 41M 199808-00 and 41M 199827-00 will appear in the Basin 41M Final Decree as shown on the post decree abstracts attached to this order.

This case is CLOSED.

Russ McElyea
Chief Water Judge

¹ The period of diversion on Exhibit 1 (41M 199808-00 proposed abstract) attached to the stipulation does not match the period of diversion as it appeared in the 41M Preliminary Decree. The proposed abstract shows the period of diversion as April 20 to October 10, whereas the Preliminary Decree abstract shows April 20 to October 14. The Agreement section of the stipulation does not request changes to the period of diversion for 41M 199808-00. Because the Agreement section is part of the executed stipulation, as opposed to an attachment to it, the Court did not change the period of diversion.

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

Water Right Number: 41M 199808-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

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

Priority Date: DECEMBER 31, 1964

Type of Historical Right: USE

Purpose (Use): IRRIGATION
Irrigation Type: FLOOD

Flow Rate: 8.33 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: 220.00

Source Name: MORGAN COULEE
Source Type: SURFACE WATER
 ALSO KNOWN AS MILLER COULEE

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	2	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 10

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	94.00		N2N2	2	29N	7W	PONDERA
2	6.00		SENE	2	29N	7W	PONDERA
3	120.00		S2S2	35	30N	7W	PONDERA
Total:	220.00						

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.

199808-00 199827-00

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

Water Right Number: 41M 199827-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

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

Priority Date: DECEMBER 31, 1964

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: MORGAN COULEE

Source Type: SURFACE WATER

ALSO KNOWN AS MILLER COULEE

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	2	29N	7W	PONDERA
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	HEADGATE					
Ditch Name:	RYAN LAUFFER DITCH					
2		NWNW	2	29N	7W	PONDERA
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	HEADGATE					
Ditch Name:	RYAN LAUFFER DITCH					
3		N2	3	29N	7W	PONDERA
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	HEADGATE					
Ditch Name:	RYAN LAUFFER DITCH					

4 NWSW 3 29N 7W PONDERA

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: RYAN LAUFFER DITCH

5 SE 4 29N 7W PONDERA

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: RYAN LAUFFER DITCH

6 S2SW 4 29N 7W PONDERA

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: RYAN LAUFFER DITCH

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		4	NWNWNW	2	29N	7W	PONDERA
2			NWNW	2	29N	7W	PONDERA
3			N2	3	29N	7W	PONDERA
4			NWSW	3	29N	7W	PONDERA
5			SE	4	29N	7W	PONDERA
6			S2SW	4	29N	7W	PONDERA

Remarks:

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.

199808-00 199827-00