

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

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

CLAIMANT: Boone & Crockett Club Inc.

OBJECTOR: Boone & Crockett Club Inc.

CASE 41M-0004-I-2024
41M 30121919

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 may file a written objection to this Master’s Report within **10 days** of the stamped date if you disagree or find errors with the Master’s findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master’s Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. 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

Statement of the case

The above captioned stock claim received an objection from claimant Boone & Crockett Club Inc. Boone & Crockett Club Inc. asserts the point of diversion and place of use identified by statement of claim 41M 30121919 are historically accurate.

The claim also received an issue remark noting lack of the claim's inclusion in the previous decree.

Montana law requires the Water Court to resolve objections and issue remarks.

Issues

1. What is the historically accurate point of diversion and place of use for claim 41M 30121919?
2. Is the notice issue remark appearing on the claim resolved?

Finding of fact

Statement of claim 41M 30121919 identifies the historically accurate point of diversion and place of use for parcel ID numbers 3 and 9. The point of diversion and place of use for parcel ID numbers 3 and 9 identified by Preliminary Decree abstract 41M 30121919 should be modified to match statement of claim 41M 30121919.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. Prima facie proof may be 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 a "modest standard" and 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.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. Settlement, including the documents filed by a claimant where the claimant is the only party, is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

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

5. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

Analysis

Issue 1 – point of diversion and place of use, claim 41M 30121919

Boone & Crockett Club Inc. requested that the Preliminary Decree abstract point of diversion and place of use legal land description parcel ID numbers 3 and 9 for claim 41M 30121919 be modified to match the prima facie statement of claim. The map attached to and in support of prima facie statement of claim 41M 30121919 matches the modified point of diversion and place of use legal land descriptions requested by Boone & Crockett Club Inc.

Conclusions of law

Boone & Crockett Club Inc.’s objection along with the evidence in the claim file confirms the prima facie proof afforded the point of diversion and place of use identified by statement of claim 41M 30121919, justifies the modified point of diversion and place of use, and resolves Boone & Crockett Club Inc.’s objection to the claim.

Issue 2 – notice issue remark

Stock claim 41M 30121919 is an existing right for instream flow. The claim meets the definition of an “exempt claim.” Section 85-2-222(1), MCA. In 2013 and

2017, the Montana Legislature amended § 85-2-222, MCA, and provided for the filing of exempt claims subject to specified terms and conditions. The claim is a timely filed exempt claim.

The claim appeared in the Preliminary Decree with the following issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41M DECREE ISSUED 03/20/2015.

Water users were given the opportunity to review the claim and file an objection.

The deadline to file objections has expired. The only objection filed against the claim is resolved by these proceedings.

Conclusion of law

The referenced notice issue remark served its purpose.

Recommendations

Stock claim 41M 30121919 should be modified as follows to accurately reflect historical use.

POINT OF DIVERSION AND PLACE OF USE:

<u>ID</u>	<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
3		NWNWNE	18	27N	8W	TETON
9		E2NESW	5	27N	8W	TETON

The notice issue remark should be removed from the claim abstract.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm implementation of the recommendations in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail

W. John Tietz
Browning Kaleczyc Berry & Hoven PC
PO Box 1697
Helena, MT 59624-1697
(406) 443-6820
john@bkbh.com
megan@bkbh.com

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

Water Right Number: 41M 30121919 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: BOONE & CROCKETT CLUB INC
250 STATION DR
MISSOULA, MT 59801-2753

Priority Date: APRIL 16, 1895

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: DUPUYER CREEK

Source Type: SURFACE WATER

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

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESW	18	27N	8W	TETON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		E2NW	18	27N	8W	TETON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		NWNE	18	27N	8W	TETON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		W2SE	7	27N	8W	TETON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		SESWNE	7	27N	8W	TETON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
6		E2NE	7	27N	8W	TETON
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

7	W2NWNW	8	27N	8W	TETON
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
8	S2SW	5	27N	8W	TETON
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
9	NESW	5	27N	8W	TETON
Period of Diversion:	JANUARY 1 TO DECEMBER 31				
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE				
10	NWNWSE	5	27N	8W	TETON
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			NESW	18	27N	8W	TETON
2			E2NW	18	27N	8W	TETON
3			NWNE	18	27N	8W	TETON
4			W2SE	7	27N	8W	TETON
5			SESWNE	7	27N	8W	TETON
6			E2NE	7	27N	8W	TETON
7			W2NWNW	8	27N	8W	TETON
8			S2SW	5	27N	8W	TETON
9			NESW	5	27N	8W	TETON
10			NWNWSE	5	27N	8W	TETON