

Montana Water Court  
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**FILED**  
06/12/2024  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
40T-0008-I-2023  
Weisz, Madeleine  
14.00

IN THE WATER COURT OF THE STATE OF MONTANA  
ST. MARY RIVER – BASIN 40T  
INTERLOCUTORY DECREE

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CLAIMANT: Amy J. Raines; John T. Raines

OBJECTOR: Blackfeet Tribe

**CASE 40T-0008-I-2023**

40T 30123395

40T 30123410

**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**

### **FINDINGS OF FACT**

1. Claims 40T 30123395 and 40T 30123410 are owned by John T. Raines and Amy J. Raines. The claims received DNRC issue remarks and objections from the Blackfeet Tribe.

2. On May 6, 2024, the parties filed a Stipulation to resolve the objections.

3. In the Stipulation, the parties agree that claim 40T 30123395 should be dismissed from the adjudication.

4. The parties explain that the Tribe objected to claim 40T 30123410 because its POD/POU no. 3 overlaps with claims 40T 30123395, 40T 30123406, and 40T 30123417. In Case 40T-0006-I-2023, Raines agreed to withdraw claim 40T 3012406 and to remove POD/POU no. 2 from claim 40T 30123417. Raines agreed to withdraw claim 40T 30123395 in the Stipulation filed in this case (see Finding of Fact 2). The stipulation indicates that based on the above agreed to withdrawals and modifications, the Tribe agrees to withdraw its objection to claim 40T 30123410.

9. Claim 40T 30123410 received an issue remark stating, this claim number was not included in the Basin 40T Decree issued 6/25/2014. This issue remark is considered a notice issue remark, meaning that it provides notice that the claims were not included in the prior decree, but does not require further proceedings to resolve. The notice issue remark has served its purpose and should be removed from the claim abstract.

### **CONCLUSIONS OF LAW**

1. A properly filed claim of an existing right or an amended claim of existing 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.

2. The claimant of a water right claim may waive the advantage of § 85-2-227, MCA by requesting a reduction or limitation of an element of a water right claim. The water court may accept a claimant's requested reduction or limitation without further presentation of evidence unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

3. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. 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. § 85-2-248(3), MCA. The issue remark appearing on claim 40T 30123410 is a notice issue remark that has served its purpose and should be removed as resolved.

4. Settlement agreements are subject to review and approval of the Water Court. Rule 17(a), W.R.Adj.R. The settlement documentation in this Case should be accepted by the Court.

### RECOMMENDATIONS

1. Claim 40T 30123395 should be dismissed from the adjudication.
2. The issue remark appearing on claim 40T 30123410 should be removed from the claim abstract.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

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**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**ST. MARY RIVER**  
**BASIN 40T**

**Water Right Number:** 40T 30123395 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** AMY J RAINES  
4041 WINGINA RD  
VALIER, MT 59486-5180

JOHN T RAINES  
4041 WINGINA RD  
VALIER, MT 59486-5180

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** STOCK

**Flow Rate:**

**Volume:**

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

**Source Type:** SURFACE WATER

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

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
ST. MARY RIVER  
BASIN 40T**

**Water Right Number:** 40T 30123410 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** AMY J RAINES  
4041 WINGINA RD  
VALIER, MT 59486-5180

JOHN T RAINES  
4041 WINGINA RD  
VALIER, MT 59486-5180

**Priority Date:** JULY 26, 1918

**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:** UNNAMED TRIBUTARY OF WILLOW 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		S2SWSE	8	37N	12W	GLACIER
<b>Period of Diversion:</b>		JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>		LIVESTOCK DIRECT FROM SOURCE				
2		E2SESW	8	37N	12W	GLACIER
<b>Period of Diversion:</b>		JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>		LIVESTOCK DIRECT FROM SOURCE				
3		W2E2	17	37N	12W	GLACIER
<b>Period of Diversion:</b>		JANUARY 1 TO DECEMBER 31				
<b>Diversion Means:</b>		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</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			S2SWSE	8	37N	12W	GLACIER
2			E2SESW	8	37N	12W	GLACIER
3			W2E2	17	37N	12W	GLACIER

**Remarks:**

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE BLACKFEET INDIAN RESERVATION.