

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

FILED
03/01/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
40T-0004-I-2023
Weisz, Madeleine
12.00

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

CLAIMANT: Watson Land Company

OBJECTORS: United States of America (Bureau of Indian
Affairs); Blackfeet Tribe

CASE 40T-0004-I-2023
40T 30126616

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. Claim 40T 30126616 appeared in the 40T Interlocutory Decree issued March 17, 2022. It received an objection from the Blackfoot Tribe and the United States of America Bureau of Indian Affairs (the United States).

2. On September 7, 2023, the parties filed a Stipulation to resolve the Objections. The Stipulation contained several clerical errors, and the Court requested a corrected Stipulation be filed. On January 12, 2024, a corrected Stipulation was filed.

3. The parties request that the priority date for claim 40T 30126616 be modified from December 31, 1918, to November 14, 1961.

4. Claim 40T 30126616 appeared in the 40T Preliminary Decree with a notice issue remark stating that the claim was not included in the Basin 40T Preliminary Decree, which was issued June 25, 2014. The issue remark has served its purpose of providing notice and should be removed from the claim.

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. The requested modification to the priority date for claim 40T 30126616 amounts to a reduction of the claim and may be accepted without further presentation of evidence.

3. 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.

4. 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 30126616 has served its purpose of providing notice and should be considered resolved.

RECOMMENDATIONS

1. The priority date for claim 40T 30126616 should be modified to November 14, 1961, based on the parties' Stipulation.

2. The issue remark should be removed from the claim.

A Post Decree Abstract of Water Right Claim is 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.

Service via Electronic Mail:

Derek E. Kline
Attorney at Law
PO Box 223
East Glacier Park, MT
(406) 338-7777
dkline@gmail.com
tgilham@blackfeetnation.com

Rebecca M. Ross
U.S. Department of Justice
Indian Resources Section, ENRD
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044
(202) 305-0269
Rebecca.Ross@usdoj.gov
IRSMontanaWater.enrd@usdoj.gov

Thane Johnson
Johnson, Berg & Saxby, PLLP
PO Box 3038
Kalispell, MT 59903-3038
(406) 755-5535
courtdocs@jbsattorneys.com
dbungay@jbsattorneys.com

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

Water Right Number: 40T 30126616 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: WATSON LAND COMPANY
191 FOYS CANYON RD
KALISPELL, MT 59901 7519

***Priority Date:** NOVEMBER 14, 1961

***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 SAINT MARY RIVER

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		E2NESE	24	36N	14W	GLACIER

Period of Diversion: JUNE 1 TO NOVEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		NENENE	24	36N	14W	GLACIER
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***Period of Diversion:** JUNE 1 TO NOVEMBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JUNE 1 TO NOVEMBER 1

***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			E2NESE	24	36N	14W	GLACIER
2			NENENE	24	36N	14W	GLACIER

Remarks:

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