

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
CUT BANK CREEK – BASIN (41L)

CLAIMANT: Kathy A. Maggi

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

41L-0112-P-2024
41L 178253-00
41L 178254-00

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 Blackfeet Tribe and the United States of America (Bureau of Indian Affairs) filed objections to all elements of the above captioned stock claims.

The claims' point of diversion and place of use are within the boundaries of the Blackfeet Reservation. Pursuant to an Order directing the Department of Natural Resources and Conservation (DNRC) examination of such claims, the claims appeared in the Preliminary Decree for Basin 41L with an issue remark stating it was not clear whether the claims were state-based or part of the Tribal Water Right as defined by the Blackfeet Tribe-Montana-United States Compact.¹ Sections 85-20-1501, et al. MCA.

On September 6, 2024, the parties filed a Stipulation for the Resolution of Objections.

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

Issues

1. Should the court accept the stipulated terms?
2. Is the issue remark on each claim resolved?

Findings of fact

1. The priority date for claims 41L 178253-00 and 41L 178254-00 should be reduced to December 18, 1957.

2. The historical point of diversion and place of use for claim 41L 178254-00 should be refined to the W2SENE, SWNE, NWNESE, and N2NWSE of Section 34, Township 34 North, Range 9 West, Glacier County.

3. Claims 41L 178253-00 and 41L 178254-00 are state-based claims.

¹ See Order Establishing Procedures for Examination of Claim Located within the Exterior Boundaries of the Blackfeet Indian Reservation and Order Pursuant to Section 85-2-243, MCA, Concerning Resolution of the P800 Issue Remark for Claims Located within the Exterior Boundaries of the Blackfeet Indian Reservation (Basins 40F, 40T, 41L, 41M) (March 29, 2013).

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. The Water Court may accept a settlement agreement that reduces or limits an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

5. 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.

6. 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 – acceptance of stipulated terms

The parties stipulated to a reduced priority date for claims 41L 178253-00 and 41L 178254-00 and a refined point of diversion and place of use legal land description for

claim 41L 178254-00.

Conclusions of law

The evidence entered into the record is a reduction within the parameters of statements of claim 41L 178253-00 and 41L 178254-00, justifies the modifications to the claims, and resolves the objections to the claims. The stipulated terms should be accepted by the court.

Issue 2 – issue remark resolution

Claims 41L 178253-00 and 41L 178254-00 appeared in the Preliminary Decree with the following issue remark:

IT IS NOT CLEAR WHETHER THIS CLAIM IS A STATE-BASED WATER RIGHT OR PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE BLACKFEET TRIBE - MONTANA COMPACT. ADDITIONAL EVIDENCE MAY BE REQUIRED BEFORE THIS CLAIM CAN BE DECREED.

The Stipulation explains:

- The refined legal land descriptions for the point of diversion and place of use identified by claim 41L 178254-00 result in the removal of trust lands from the legal land descriptions.
- The priority date for each claim should be reduced to the date the property identified by each claim left trust status.

Based upon the foregoing modifications, the parties agree claims 41L 178253-00 and 41L 178254-00 are state-based claims and “not part of the Tribal Water Right as defined in the Blackfeet Tribe Water Rights Compact.”

Conclusion of law

The referenced issue remark is resolved.

Recommendations

Stock claim 41L 178253-00 should be modified as follows to accurately reflect historical use.

PRIORITY DATE:

JANUARY 1, 1910

DECEMBER 18, 1957

Stock claim 41L 178254-00 should be modified as follows to accurately reflect historical use.

PRIORITY DATE: JANUARY 1, 1910 DECEMBER 18, 1957

POINT OF DIVERSION AND PLACE OF USE:

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
S2NE		34	34N	9W	GLACIER
N2N2SE		34	34N	9W	GLACIER
W2SENE		34	34N	9W	GLACIER
SWNE		34	34N	9W	GLACIER
NWNESE		34	34N	9W	GLACIER
N2NWSE		34	34N	9W	GLACIER

The issue remark should be removed from the claim abstracts.

Post Decree Abstracts of Water Right Claim accompany this report to confirm implementation of the recommendations in the state’s centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
CUT BANK CREEK
BASIN 41L**

Water Right Number: 41L 178253-00 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: KATHY A MAGGI
PO BOX 814
CUT BANK, MT 59427

Priority Date: DECEMBER 18, 1957

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: WILLOW 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		W2NESE	34	34N	9W	GLACIER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		W2SE	34	34N	9W	GLACIER
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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			W2NESE	34	34N	9W	GLACIER
2			W2SE	34	34N	9W	GLACIER

Remarks:

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

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
CUT BANK CREEK
BASIN 41L**

Water Right Number: 41L 178254-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: KATHY A MAGGI
PO BOX 814
CUT BANK, MT 59427

Priority Date: DECEMBER 18, 1957

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: CUT BANK 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		W2SENE	34	34N	9W	GLACIER
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
2		SWNE	34	34N	9W	GLACIER
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
3		NWNESE	34	34N	9W	GLACIER
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		LIVESTOCK DIRECT FROM SOURCE				
4		N2NWSE	34	34N	9W	GLACIER
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</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			W2SENE	34	34N	9W	GLACIER
2			SWNE	34	34N	9W	GLACIER
3			NWNESE	34	34N	9W	GLACIER
4			N2NWSE	34	34N	9W	GLACIER

Remarks:

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