

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

CLAIMANTS: Linda D. Johnson; Arnie R. Johnson;
Landslide Farms Inc.

41L-0111-P-2024

41L 45030-00

41L 116902-00

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

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 captioned 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.

The Blackfeet Tribe and the United States of America (Bureau of Indian Affairs) filed objections to all elements of stock claim 41L 45030-00.

On February 16, 2024, the court consolidated the captioned claims into this case to address the issue remark on each claim and the objections filed to stock claim 41L 45030-00. The court also joined the Blackfeet Tribe and the BIA as necessary parties to resolve the issue remark on stock claim 41L 116902-00.

On May 13, 2025, 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 historical place of use for stock claim 41L 45030-00 should be reduced to exclude place of use ID number 4, the NENESE of Section 15, Township 36 North, Range 8 West, Glacier County from the abstract. Based upon the reduced place of use, co-claimants Linda D. Johnson and Arnie R. Johnson should be removed from the

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).

ownership of the claim.

2. The priority date for stock claim 41L 45030-00 should be reduced to February 15, 1957.

3. Stock claim 41L 116902-00 should be dismissed.

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

For stock claim 41L 45030-00, the parties stipulated to a reduced place of use, a reduced priority date, and the removal of co-owners Arnie R. Johnson and Linda D. Johnson.

Conclusions of law

The evidence entered into the record is a reduction within the parameters of statement of claim 41L 45030-00, justifies the modifications to the claim, and resolves the objections to the claim. The stipulated terms should be accepted by the court.

Issue 2 – issue remark resolution

Both captioned stock claims 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.

Based upon the foregoing modifications to claim 41L 45030-00, the parties agree claim 41L 45030-00 is a state-based claim and “not part of the Tribal Water Right as defined in the Blackfeet Tribe Water Rights Compact.”

Claimants Linda D. Johnson and Arnie R. Johnson agreed to withdraw their interest in claim 41L 45030-00 and agreed to withdraw claim 41L 116902-00 entirely “in exchange for a tribal water permit issued to them by the Tribe.”

Conclusions of law

The referenced issue remark is resolved for claim 41L 45030-00.

The referenced issue remark on claim 41L 116902-00 is mooted due to the dismissal of the claim.

Recommendations

Stock claim 41L 45030-00 should be modified as follows to accurately reflect historical use.

OWNERS: LANDSLIDE FARMS INC; ~~ARNIE R JOHNSON; LINDA D. JOHNSON~~

PRIORITY DATE: ~~MAY 31, 1925~~

FEBRUARY 15, 1957

PLACE OF USE:

<u>ACRES</u>	<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
		SWSWNW	14	36N	8W	GLACIER
		NWNWSW	14	36N	8W	GLACIER
		SESENE	15	36N	8W	GLACIER
		NENESE	15	36N	8W	GLACIER

The issue remark should be removed from the abstract of claim 41L 45030-00.

Stock claim 41L 116902-00 should be dismissed.

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 45030-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LANDSLIDE FARMS INC
250 LANDSLIDE
CUT BANK, MT 59427

Priority Date: FEBRUARY 15, 1957

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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 LITTLE ROCK COULEE

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		NWNWSW	14	36N	8W	GLACIER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

THE DAM EXTENDS INTO THE NENESE SEC 15 TWP 36N RGE 08W GLACIER COUNTY.

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNWSW	14	36N	8W	GLACIER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 13.00 FEET

Depth: 10.00 FEET

Surface Area: 3.10 ACRES

Capacity: 12.40 ACRE-FEET

Period of Use: MARCH 15 TO NOVEMBER 15

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			SWSWNW	14	36N	8W	GLACIER
2			NWNWSW	14	36N	8W	GLACIER
3			SESENE	15	36N	8W	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 116902-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: DISMISSED

Owners: ARNIE R JOHNSON
3726 CHALK BUTTE
CUT BANK, MT 59427-0576

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF BUFFALO LAKE

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.