

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION – SHOSHONE RIVER  
BASIN 43N INTERLOCUTORY DECREE

\* \* \* \* \*

CLAIMANT: United States, DOA Forest Service

OBJECTOR: United States, DOA Forest Service

**CASE 43N-0008-I-2025**

43N 30145192

**43N 30171519**

**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, conclusion 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 to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail 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**

The United States, DOA Forest Service objected to its claim 43N 30145192. The claim appeared in the Interlocutory Decree with the following issue remark:

THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

On July 11, 2025 the United States' Response To Court Order was filed providing information to address and resolve its objection and the issue remark. This document is viewable in the Court's FullCourt Enterprise case management system.

#### APPLICABLE LAW

“‘Implied Claim’ means a claim authorized by the water court to be separated and individually identified when a statement of claim includes multiple rights.” Rule 2(a)(33), W.R.C.E.R.

From 41P-108 “Circle S Ranch, Inc.” Order On Motion To Modify Claims 5-16-19, at 2019 Mont. Water LEXIS 8, page 5:

The Water Court recognizes implied claims in certain circumstances *In re Musselshell River below Roundup*, Case 40C-47, 1994 Mont. Water LEXIS 18, \*78 (July 14, 1994). However, before the Court will recognize an implied claim, the claimant must prove that several factors exist. These include: (1) proof of two or more water rights in the original claim form or the material submitted with the claim form; (2) proof of historic use corroborating the implied claim; and (3) proof that recognizing the implied claim(s) will avoid causing a change to historic water use or increase the historic burden to other water users. *In re Foss*, Case 76HF-580, 2013 Mont. Water LEXIS 17, \*32 (Jan. 31, 2013); *In re Martinell*, Case 41A-148, 2018 Mont. Water LEXIS 3, \*6 (June 14, 2018). These standards assure that implied claims are not used to revive a claim that was forfeited as a matter of law by missing the filing deadline. Mont. Code Ann. § 85-2-226 (establishing conclusive presumption of abandonment of for claims not timely filed); *In re Climbing Arrow Ranch*, Case 41F-A19, 2019 Mont. Water LEXIS 1 (Mar. 6, 2019). The implied claim process also cannot be used to expand the elements of a statement of claim. *In re Eliasson Ranch Company*, Order Amending and Adopting Master's Report, Case 40A-115, 2004 Mont. Water LEXIS 2, \*6 (Jun. 28, 2004) (“*Eliasson*”).

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 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 including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

### FINDINGS OF FACT

1. A review of the Statement of Claim and its attachments plus the DNRC Examination Worksheet shows that two different sources are identified: an unnamed tributary of Sage Creek and an unnamed tributary of Sage Creek, North Fork.

2. Claim 43N 30145192 should be used for the unnamed tributary of Sage Creek portion. Implied claim 43N 30171519 should be used for the unnamed tributary of Sage Creek, North Fork portion.

3. For claim 43N 30145192, the Interlocutory Decree states that the source is SPRING, UNNAMED TRIBUTARY OF SAGE CREEK. The source name should be UNNAMED TRIBUTARY OF SAGE CREEK. The issue remark concerning two sources should be removed as addressed and resolved.

The Interlocutory Decree also includes the following remark on the abstract for this claim:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43N DECREE ISSUED 06/13/2013.

This remark provides notice that the claim was not included in the Preliminary Decree. The remark should be removed as having served its notice purpose.

4. The elements of implied claim 43N 30171519 should be the same as 43N 30145192 except 1) the source should be UNNAMED TRIBUTARY OF SAGE CREEK, NORTH FORK, and 2) point of diversion and place of use should only be the NE section 19, T7S, R27E, CARBON.

### CONCLUSION OF LAW

Statement of Claim 43N 30145192 and its attachments, the DNRC Examination Worksheet, and the United States' Response To Court Order are sufficient to generate an implied claim, and sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court generate implied claim 43N 30171519 and make the changes specified in the Findings of Fact to correct the Interlocutory Decree for this Basin. A Post Decree Abstract of

Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW**

**Service Via Electronic Mail:**

Judith E. Coleman, Senior Attorney  
USA, DOJ ENRD-NRS  
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MontanaBasins.ENRD@USDOJ.GOV

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**SHOSHONE RIVER**  
**BASIN 43N**

**Water Right Number:** 43N 30145192 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804-7203

**Priority Date:** MARCH 1, 1940

**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 STOCKWATERING 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 SAGE 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			24	7S	26E	CARBON

**Period of Diversion:** JUNE 1 TO OCTOBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2			19	7S	27E	CARBON
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**Period of Diversion:** JUNE 1 TO OCTOBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JUNE 1 TO OCTOBER 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				24	7S	26E	CARBON
2				19	7S	27E	CARBON

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**Remarks:**

IMPLIED CLAIM NO. 43N 30171519 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SHOSHONE RIVER  
BASIN 43N

**Water Right Number:** 43N 30171519 STATEMENT OF CLAIM  
**Version:** 1 -- ORIGINAL RIGHT  
**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804-7203

**Priority Date:** MARCH 1, 1940

**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 STOCKWATERING 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 SAGE CREEK, NORTH FORK

**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		NE	19	7S	27E	CARBON	
<b>Period of Diversion:</b> JUNE 1 TO OCTOBER 31							
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE							
<b>Period of Use:</b> JUNE 1 TO OCTOBER 31							
<b>Place of Use:</b>							
<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			NE	19	7S	27E	CARBON

**Remarks:**

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 43N 30145192.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43N INTERLOCUTORY DECREE ISSUED 09/12/2024.