

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
TWO MEDICINE RIVER - BASIN 41M  
INTERLOCUTORY DECREE

\*\*\*\*\*

CLAIMANTS: Patricia K. Chaney; John R. Chaney; Chaney  
Family Properties LLC

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

CASE 41M-0007-I-2024  
41M 30113535  
41M 30113536

**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 United States of America (Bureau of Indian Affairs) and the Blackfeet Tribe filed objections to the captioned claims stating the claims had overly broad legal land descriptions that encompassed land not owned by the claimants.

The captioned claims also received an issue remark providing notice to water users that the claims were not included in the previous decree. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination.

The court held a status conference and set several filing deadlines. Claimants failed to participate in any proceedings. Several orders issued by the court included a written warning that failure to participate in proceedings could result in sanctions, up to and including termination of the claims. The United States of America (Bureau of Indian Affairs) filed a Motion for Show Cause Order. The court denied the request for show cause without prejudice as the requested sanction was not just and set a filing deadline for the United States of America (Bureau of Indian Affairs) to file evidence supporting just sanctions. The order setting filing deadline included the statement that if nothing was filed by the deadline, a permanent information remark would be added to the claims "noting the points of diversion and places of use are only on claimants' private land and do not include any federal land or land held in trust by the United States, and the elements of each claim shall remain as identified by the Interlocutory Decree abstracts." No filings were made by the deadline.

### **Issue**

Are the issues concerning the captioned claims resolved?

## **Findings of fact**

Stock claims 41M 30113535 and 41M 30113536 do not include federal land, land held in trust by the United States, or Blackfoot Tribe land.

## **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. This prima facie proof may be contradicted and 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. 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.

4. 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.

5. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. When a claimant fails to comply with an Order issued by the Water Court, including an order issued by a Water Master appointed by the Court, the Court upon its own initiative or upon motion, can among other actions: 1) modify the elements of the claim to conform with the information in the claim file,

information obtained by the Court, or information included in an objection, or 2) terminate the claim. Rule 22, W.R.Adj.R.

## **Analysis**

### **Resolution of issues**

After repeated attempts to resolve the objections to the claims in this case, the United States of America (Bureau of Indian Affairs) filed a Motion for Show Cause Order pursuant to Rule 22, W.R.Adj.R., for claimants, Patricia K. Chaney, John R, Chaney, and Chaney Family Properties LLC to Show Cause why claims 41M 30113535 and 41M 30113536 should not be terminated due to claimants' failure to participate in these proceedings. The reasoning for the requested sanction for these claims did not support dismissal of the claims as a just sanction. The United States of America (Bureau of Indian Affairs) provided no evidence that the claims are not valid state-based claims and no information in the claim files indicated the claims are not valid state-based claims.

The prima facie statements of claim identify the points of diversion and places of use for these claims. The United States of America (Bureau of Indian Affairs) and the Blackfeet Tribe did not provide evidence substantiating how the claims should be modified to remove federal land or Blackfeet Tribe land, or evidence substantiating that the claims were not valid state-based claims thereby overcoming the prima facie proof afforded the statements of claims.

Stock claims 41M 30113535 and 41M 30113536 appeared in the Interlocutory Decree with the following issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 76D DECREE ISSUED 03/22/1984.

Stock claims 41M 30113535 and 41M 30113536 are existing rights for instream flow. The claims meet the definition of an "exempt claim." Section 85-2-222(1), MCA. In 2013 and 2017, the Montana Legislature amended § 85-2-222, MCA, and provided for the filing of exempt claims subject to specified terms and conditions. The claims are exempt claims timely filed after issuance of the previous decree for Basin 41M. Water

users were given the opportunity to review these claims and file an objection. The only objections filed against these claims are resolved by these proceedings.

### **Conclusions of law**

The prima facie proof provided statements of claim 41M 30113535 and 41M 30113536 was not overcome by the record before the court. Stock claims 41M 30113535 and 41M 30113536 are state-based water rights on claimants' private property.

The issue remark noting that stock claims 41M 30113535 and 41M 30113536 were not included in the previous decree served its notice purpose.

### **Recommendations**

No changes should be made to the elements of stock claims 41M 30113535 and 41M 30113536.

The following permanent general information remark should be added to each claim abstract:

THE POINTS OF DIVERSION AND PLACES OF USE IDENTIFIED BY THIS CLAIM ARE ON PRIVATE LAND. THE POINTS OF DIVERSION AND PLACES OF USE DO NOT INCLUDE FEDERAL LAND, LAND HELD IN TRUST BY THE UNITED STATES, OR BLACKFEET TRIBE LAND.

The notice 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**

Patricia K Chaney  
John R Chaney  
Chaney Family Properties LLC  
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**Service via Electronic Mail**

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
TWO MEDICINE RIVER  
BASIN 41M**

**Water Right Number:** 41M 30113535 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** JOHN R CHANEY  
PO BOX 8858  
PORTLAND, OR 97207-8858

PATRICIA K CHANEY  
PO BOX 8858  
PORTLAND, OR 97207-8858

**\*Priority Date:** DECEMBER 31, 1964

**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 TWO MEDICINE RIVER, SOUTH FORK

**Source Type:** SURFACE WATER

ALSO KNOWN AS UNNAMED TRIBUTARY OF POCKET CREEK

**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		NWSESE	9	30N	12W	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 Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWSESE	9	30N	12W	GLACIER

**Remarks:**

THE POINTS OF DIVERSION AND PLACES OF USE IDENTIFIED BY THIS CLAIM ARE ON PRIVATE LAND. THE POINTS OF DIVERSION AND PLACES OF USE DO NOT INCLUDE FEDERAL LAND, LAND HELD IN TRUST BY THE UNITED STATES, OR BLACKFEET TRIBE LAND.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
TWO MEDICINE RIVER  
BASIN 41M**

**Water Right Number:** 41M 30113536 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** CHANEY FAMILY PROPERTIES LLC  
PO BOX 8858  
PORTLAND, OR 97207-8858

**\*Priority Date:** DECEMBER 31, 1964

**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.

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**Source Type:** SURFACE WATER

ALSO KNOWN AS UNNAMED TRIBUTARY OF POCKET CREEK

**\*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		W2E2SW	9	30N	12W	GLACIER

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		N2NENW	16	30N	12W	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			W2E2SW	9	30N	12W	GLACIER
2			N2NENW	16	30N	12W	GLACIER

**Remarks:**

THE POINTS OF DIVERSION AND PLACES OF USE IDENTIFIED BY THIS CLAIM ARE ON PRIVATE LAND. THE POINTS OF DIVERSION AND PLACES OF USE DO NOT INCLUDE FEDERAL LAND, LAND HELD IN TRUST BY THE UNITED STATES, OR BLACKFEET TRIBE LAND.