

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
TWO MEDICINE RIVER – BASIN (41M)

CLAIMANTS: Timothy L. Kimmet; Roselynn J.
Carroll; Lewis G. Carroll

41M-0100-P-2024

41M 48282-00

41M 158721-00

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

41M 158722-00

41M 158723-00

41M 158724-00

NOTICE OF FILING OF MASTER’S REPORT

You may file a written objection to the Report if you disagree with the Master’s Findings of Fact, Conclusions of Law, or Recommendations; or if there are errors in the Report.

The above stamped date indicates the date the Master’s Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to the Master’s Report must be filed within 10 days of the date of the Master’s Report. Because the 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. This means your objection must be received no later than **13 days** from the above stamped date.

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

Statement of the case

The captioned claims received issue remarks. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

Information in the claim files indicated claimants are members of the Blackfeet Tribe and that claim 41M 158724-00 may be part of the Blackfeet Irrigation Project. The claims received issue remarks concerning potential ownership by Robert Wellman and Joan Wellman and questioning whether the claims are state-based or part of the Tribal Water Right defined by the Blackfeet-Montana-United States Compact. Claim 41M 48282-00 received an additional issue remark stating it appeared to be a duplicate of groundwater certificate 41M 47972-00.

Montana law requires the Water Court to resolve issue remarks. The court joined the Blackfeet Tribe and the United States of America (Bureau of Indian Affairs) as necessary parties to this case to resolve the issue remark appearing on each claim concerning whether the claims are state-based or part of the Tribal Water Right. The Blackfeet Tribe and the United States of America (Bureau of Indian Affairs) were added to the caption as objectors due to their joinder.

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 Blackfeet Tribe and the United States of America (Bureau of Indian Affairs) filed two Joint Motions for Show Cause Order. The court set a filing deadline for claimants to show cause. Claimants did not file anything by the show cause filing deadline.

Issue

Are the issue remarks on the captioned stock claims resolved?

Findings of fact

1. Stock claims 41M 48282-00 and 41M 158724-00 should be dismissed.
2. Stock claims 41M 158721-00 41M 158722-00, and 41M 158723-00 are state-based claims. The Preliminary Decree abstracts for stock claims 41M 158721-00 41M 158722-00, and 41M 158723-00 identify their historically accurate elements.

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.

6. 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. If a claimant fails to comply with an Order issued by the Court in its review of issue remarks, the Court may amend the claim to conform with information found in the claim file and information before the Court. Section 85-2-248(9)(a),(b), MCA.

Analysis

Issue remark resolution

After repeated attempts to resolve the issues concerning the claims in this case, the United States of America (Bureau of Indian Affairs) and Blackfeet Tribe filed a Joint Motion for Show Cause Order pursuant to Rule 22, W.R.Adj.R., for claimants, Roselynn J. Carroll and Lewis G. Carroll, to Show Cause why claim 41M 158724-00 should not be terminated due to the United States of America (Bureau of Indian Affairs') ownership in trust of the underlying place of use until April 13, 1984. The United States of America (Bureau of Indian Affairs) and Blackfeet Tribe provided a fee simple patent to support their requested sanction. *See* the court's case management system, FullCourt Enterprise, at document sequence 6.00. Based upon the pre-July 1, 1973 ownership of the place of use, it appears any water right claim appurtenant to this property would be part of the Tribal Water Right defined by the Blackfeet-Montana-United States Compact. Therefore, stock claim 41M 158724-00 was not an existing state-based water right

previous to July 1, 1973, and should not be included in the Water Court's adjudication of existing historical water rights.

Stock claim 41M 48282-00 included an issue remark noting it duplicated groundwater certificate 41M 47972-00. The court proposed dismissal of claim 41M 48282-00 to resolve the duplicate claim issue remark.

A thirty-day deadline was set for claimants to respond to the proposed dismissal of claims 41M 48282-00 and 41M 158724-00. Claimants did not respond by the deadline.

Claims 41M 158721-00, 41M 158722-00, and 41M 158723-00 have a point of diversion and/or place of use 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 41M 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 The examination Order directed the DNRC to collect additional information to aid the court in the resolution of the issue remark. Pursuant to the Order, the DNRC applied a checklist to examine the claims according to their claimed priority date, the status of the land (tribal/trust or fee), and the status of the claimant (United States as trustee, Blackfeet Tribe, an individual member of the Blackfeet Tribe, or no special status). This information was placed in the claim files. Information in claim files 41M 158721-00, 41M 158722-00, and 41M 158723-00 and information before the Court confirms 1) the priority date of these claims does *not* claim the *Winters* priority date or the Tribal Water Right priority date, and 2) the claims are on fee land. Claimants' identification as members of the Blackfeet Tribe is not dispositive concerning the claims' status as state-based or part of the Tribal Water Right. The prima facie statements of claim identify the claims as state-based claims. The Blackfeet Tribe and the United States of America (Bureau of Indian Affairs) did not provide evidence overcoming 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).

prima facie proof afforded the statements of claims.

Potential owners Robert Wellman and Joan Wellman have been included on all orders in this case, thereby receiving notice of their potential ownership multiple times. Robert Wellman and Joan Wellman did not update the ownership of these claims.

Conclusions of law

Based upon the issue remark questioning whether stock claim 41M 158724-00 is a state-based claim or part of the Tribal Water Right, the Blackfeet Tribe's and United States of America (Bureau of Indian Affairs') request to terminate the claim and evidence filed in support of the request to terminate claim 41M 158724-00, and the claimants' repeated failure to comply with Orders issued by the court, the requested sanction appears just. Claim 41M 158724-00 should be dismissed. Dismissal of the claim resolves the issue remark questioning whether claim 41M 158724-00 is a state-based claim or part of the Tribal Water Right and moots the potential ownership issue remark.

Based upon the duplicate claim issue remark on stock claim 41M 48282-00 and the claimants' repeated failure to comply with Orders issued by the court, the dismissal of claim 41M 48282-00 is a just sanction. Claim 41M 48282-00 should be dismissed. Dismissal of the claim resolves the duplicate claim issue remark and moots both the issue remark questioning whether claim 41M 48282-00 is a state-based claim or part of the Tribal Water Right and the potential ownership issue remark.

The prima facie proof provided statements of claim 41M 158721-00, 41M 158722-00, and 41M 158723-00 was not overcome by the record before the court. Stock claims 41M 158721-00, 41M 158722-00, and 41M 158723-00 are state-based water rights and are not part of the Tribal Water Right as defined by the Blackfeet Tribe-Montana-United States Compact. The issue remark questioning whether stock claims 41M 158721-00, 41M 158722-00, and 41M 158723-00 are state-based claims or part of the Tribal Water Right is resolved.

The potential ownership issue remark on stock claims 41M 158721-00, 41M 158722-00, and 41M 158723-00 served its notice purpose.

Recommendations

Stock claims 41M 48282-00 and 41M 158724-00 should be dismissed.

No changes should be made to the elements of stock claims 41M 158721-00, 41M 158722-00, and 41M 158723-00. The issue remarks 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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Roselynn J Carroll
Lewis G Carroll
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~~Choteau MT 59422~~
~~PO Box 625~~
~~Choteau, MT 59422~~
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Potential Owners:

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

Water Right Number: 41M 48282-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: TIMOTHY L KIMMET
PO BOX 84
RUDYARD, MT 59540-0084

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: SPRING, UNNAMED TRIBUTARY OF TWO MEDICINE RIVER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 41M 158721-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LEWIS G CARROLL
1105 2ND ST NE
CHOTEAU, MT 59422

ROSELYNN J CARROLL
1105 2ND ST NE
CHOTEAU, MT 59422

Priority Date: JUNE 10, 1967

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 BADGER 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		SESWSE	1	31N	8W	GLACIER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESWSE	1	31N	8W	GLACIER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 0.55 ACRES

Capacity: 1.76 ACRE-FEET

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			SESWSE	1	31N	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
TWO MEDICINE RIVER
BASIN 41M**

Water Right Number: 41M 158722-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LEWIS G CARROLL
1105 2ND ST NE
CHOTEAU, MT 59422

ROSELYNN J CARROLL
1105 2ND ST NE
CHOTEAU, MT 59422

Priority Date: JUNE 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 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: SPRING, UNNAMED TRIBUTARY OF KIPPS COULEE

Source Type: SURFACE WATER
ALSO KNOWN AS HAGAN SPRING

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		SWNWNW	20	31N	7W	PONDERA

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			SWNWNW	20	31N	7W	PONDERA

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
TWO MEDICINE RIVER
BASIN 41M**

Water Right Number: 41M 158723-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LEWIS G CARROLL
1105 2ND ST NE
CHOTEAU, MT 59422

ROSELYNN J CARROLL
1105 2ND ST NE
CHOTEAU, MT 59422

Priority Date: JUNE 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 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: SPRING, UNNAMED TRIBUTARY OF TWO MEDICINE RIVER

Source Type: SURFACE WATER

ALSO KNOWN AS MCTAGGART SPRING

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		NWSENW	6	31N	7W	PONDERA

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			NWSENW	6	31N	7W	PONDERA

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
TWO MEDICINE RIVER
BASIN 41M**

Water Right Number: 41M 158724-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: LEWIS G CARROLL
1105 2ND ST NE
CHOTEAU, MT 59422

ROSELYNN J CARROLL
1105 2ND ST NE
CHOTEAU, MT 59422

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF ALKALI 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.