

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

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CLAIMANTS: Wade McAlpine; Malcolm D. McAlpine

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

**CASE 41M-0010-I-2024**

41M 30126145

41M 30126153

**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 captioned stock claims stating “Claim has a priority date that is prior to when the described land went out of trust. State-based water rights could only have been perfected after the land left trust status.” Each of the claims also received a notice issue remark, placed on each claim during Department of Natural Resources and Conservation (“DNRC”) claims examination.

Montana law requires the Water Court to resolve objections and issue remarks. On May 12, 2025, the parties filed a Stipulation for the Resolution of Objections.

### **Issues**

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

### **Finding of fact**

The priority date for the captioned stock claims should be reduced to February 24, 1955.

### **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 the captioned stock claims.

### **Conclusions of law**

The proposed modification to each claim is a reduction within the parameters of each captioned statement of claim, justifies the modification to the claims, and resolves the objections to the claims. The stipulated terms should be accepted by the court.

### **Issue 2 – issue remark resolution**

The captioned claims appeared in the Interlocutory Decree with the following issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41M DECREE ISSUED 03/20/2015.

The captioned stock claims 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. These claims are exempt claims timely filed after issuance of the previous decree for Basin 41M.

The above-mentioned issue remark provided notice to water users that the claims were not previously decreed. Water users were given the opportunity to review these claims and file an objection. The only objections to these claims were resolved during these proceedings.

### **Conclusion of law**

The above-mentioned issue remark served its notice purpose.

### **Recommendations**

Stock claims 41M 30126145 and 41M 30126153 should be modified as follows to accurately reflect historical use.

**PRIORITY DATE:**

~~DECEMBER 31, 1926~~

**FEBRUARY 24, 1955**

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**

Wade McAlpine  
Malcolm D. McAlpine % Wade McAlpine  
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**Service via Electronic Mail**

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**Note: Service List Updated 7/8/2025**

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

**Water Right Number:** 41M 30126145 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** MALCOLM D MCALPINE  
% WADE MCALPINE  
501 33RD AVE NE  
GREAT FALLS, MT 59404

**Priority Date:** FEBRUARY 24, 1955

**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:** UNNAMED TRIBUTARY OF BIRCH 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		S2NE	10	30N	6W	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			S2NE	10	30N	6W	PONDERA

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**Remarks:**

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

**Contract for Deed Purchasers:** WADE MCALPINE  
501 33RD AVE NE  
GREAT FALLS, MT 59404-1177

**THIS WATER RIGHT IS APPURTENANT TO REAL PROPERTY THAT IS THE SUBJECT OF A CONTRACT FOR DEED. THE CONTRACT FOR DEED PURCHASER IS ENTITLED TO THE SAME NOTICE AS THE OWNER OF THE PROPERTY PURSUANT TO 85-2-232(1)(C) AND 70-20-115, MCA. REFERENCE TO THE CONTRACT FOR DEED PURCHASERS IN THIS ABSTRACT IS FOR NOTICE PURPOSES ONLY AND DOES NOT AMOUNT TO A STATEMENT REGARDING OWNERSHIP. UPON TRANSFER OF THE PROPERTY IDENTIFIED AS THE PLACE OF USE FOR THIS WATER RIGHT, THE TRANSFEREE IS RESPONSIBLE FOR UPDATING OWNERSHIP AS REQUIRED BY 85-2-423 AND -424, MCA. IN THE EVENT OF A DEFAULT RESULTING IN TERMINATION OF THE CONTRACT FOR DEED AND RELEASE OF DOCUMENTS FROM ESCROW, THE OWNERS SHALL PROVIDE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WITH A COPY OF A QUIT CLAIM DEED OR SIMILAR INSTRUMENT INDICATING THE CONTRACT FOR DEED PURCHASERS ARE NO LONGER ENTITLED TO RECEIVE NOTICE OF PROCEEDINGS INVOLVING THIS WATER RIGHT.**

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

**Water Right Number:** 41M 30126153 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** MALCOLM D MCALPINE  
% WADE MCALPINE  
501 33RD AVE NE  
GREAT FALLS, MT 59404

**Priority Date:** FEBRUARY 24, 1955

**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.

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**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		NENW	11	30N	6W	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			NENW	11	30N	6W	PONDERA

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