FILEED 06/25/2025 Sara Calkins CLERK Montana Water Court STATE OF MONTANA By: <u>D'Ann CIGLER</u> 400-0075-1-2024 Lambert, Kathryn 10.00

Montana Water Court P.O. Box 1389 Bozeman, MT 59771-1389 1-800-624-3270 (406) 586-4364 watercourt@mt.gov

# IN THE WATER COURT OF THE STATE OF MONTANA LOWER MISSOURI DIVISION MILK RIVER BELOW WHITEWATER CREEK INCLUDING PORCUPINE CREEK (BASIN 400) INTERLOCUTORY DECREE

CLAIMANTS: Carroll MT Properties LLC; Carroll Family Ltd Partnership

OBJECTORS: Carroll MT Properties LLC; United States of America (Bureau of Land Management)

# CASE 400-0075-I-2024 400 30125042 400 30125247 400 30125249 400 30125250 400 30127222

### NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. <u>Please review this report carefully</u>.

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**

Carroll MT Properties LLC and the United States of America (Bureau of Land Management) objected to each of these claims. Claims 40O 30125042, 40O 30125247, and 40O 30125250 each appeared in the Interlocutory Decree with the following issue remark: THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE. PART OR ALL OF THE PLACE OF USE APPEARS TO BE ON FEDERAL LAND. Claim 40O 30125249 appeared in the Interlocutory Decree with the following issue remark:

THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED PATENT DEED IS MAY 10, 1919.

On April 17, 2025 the parties filed a Stipulation To Resolve Objections. On June 20, 2025 Claimants Carroll MT Properties LLC And Carroll Family LTD Partnership's Filing Of Information To Resolve Issue Remark On Claim 40O 30125249 was filed. These documents are viewable in the Court's FullCourt Enterprise case management system.

### APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

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. For claims 40O 30125042, 40O 30125247, 40O 30125249, and 40O 30125250, the following clarification remark should be added:

ALL OR PART OF THE PLACE OF USE CONSISTS OF FEDERAL PUBLIC LANDS. THE WATER RIGHT USED ON THE PUBLIC LANDS IS APPURTENANT TO THE FOLLOWING PRIVATE LANDS. SW AND SE SECTION 23, S2 SECTION 24, N2 SECTION 25, E2NE AND W2 SECTION 26, ALL IN TOWNSHIP 32N, RANGE 37E, VALLEY COUNTY. NE, E2NW, NESW, AND NWSE SECTION 30, TOWNSHIP 32N, RANGE 38E, VALLEY COUNTY.

The ownership remark should be removed as addressed and resolved.

2. For claim 400 30125249, the Interlocutory Decree states that the priority date is

JUNE 10, 1912. The priority date should be OCTOBER 25, 1915. The priority date issue remark should be removed as addressed and resolved.

3. For claim 40O 30127222, the following clarification remark should be added: THE POINT OF DIVERSION AND PLACE OF USE ARE LIMITED TO PRIVATE LAND.

4. The Interlocutory Decree also includes the following notice remark, or a variation of it, on each of these claims:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 400 DECREE ISSUED 05/24/1995. The remarks provide notice that these claims were not in the Preliminary Decree and do not raise unresolved issues which need to be addressed. The remarks should be removed as having served their notice purposes.

### CONCLUSION OF LAW

The settlements filed by the parties is sufficient to resolve the issue remarks 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 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 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:

W. John Tietz Hallee Frandsen Browning Kaleczyc Berry & Hoven PC john@bkbh.com Cassandra@bkbh.com hallee@bkbh.com Michelle Ramus, Trial Attorney NRS-ENRD-US DOJ Michelle.ramus@usdoj.gov MontanaBasins.ENRD@USDOJ.GOV

# ABSTRACT OF WATER RIGHT CLAIM

# MILK RIVER, BELOW WHITEWATER INCLUDING PORCUPINE CREEK

Water Right Number:	400 3012	5042 STATEMENT	OF CLA	MM							
	Version:	2 POST DECRE	E								
		Status: ACTIVE									
Owners:	C/O JO EV 1640 OLD	CARROLL MT PROPERTIES LLC C/O JO EVELYN MILLER 1640 OLD 421 S BOONE, NC 28607-6291									
Priority Date:	JULY 6, 19	JULY 6, 1921									
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:	ALKALI CF	REEK									
Source Type:	SURF	ACE WATER									
*Point of Diversion and Mean	s of Diversion	:									
<u>ID</u>	<u>Govt Lo</u>	ot <u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>					
1		W2SW	26	32N	37E	VALLEY					
Period of Diversion:		OCTOBER 1									
<b>Diversion Means:</b>	LIVESTOC	K DIRECT FROM SO									
2 Period of Diversion:		E2NESE OCTOBER 1	27	32N	37E	VALLEY					
Diversion Means:	-	K DIRECT FROM S									
	LIVESTOC			221	27F						
3 Period of Diversion:	ΜΑΥ 1 ΤΟ	E2SW OCTOBER 1	35	32N	37E	VALLEY					
Diversion Means:		K DIRECT FROM SO	OURCE								
4		W2W2	35	32N	37E	VALLEY					
Period of Diversion:	MAY 1 TO	OCTOBER 1		0	0						
<b>Diversion Means:</b>	LIVESTOC	K DIRECT FROM SO	OURCE								
Period of Use:	MAY 1 TO	OCTOBER 1									
*Place of Use:											
ID Acro	<u>es Govt La</u>	ot <u>Qtr Sec</u>	<u>Sec</u>	Twp	<u>Rge</u>	<u>County</u>					
1		W2SW	26	32N	37E	VALLEY					
2		E2NESE	27	32N	37E	VALLEY					
3		E2SW	35	32N	37E	VALLEY					

#### **Remarks:**

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# ABSTRACT OF WATER RIGHT CLAIM

# MILK RIVER, BELOW WHITEWATER INCLUDING PORCUPINE CREEK

Water Right Number:	400 30125	5247	STATEMENT	OF CLA	IM							
	Version:	2 F	POST DECREE	Ξ								
		Statu	s: ACTIVE									
Owners:	CARROLL MT PROPERTIES LLC C/O JO EVELYN MILLER 1640 OLD 421 S BOONE, NC 28607-6291											
Priority Date:	APRIL 4, 19	APRIL 4, 1921										
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:	BLACKTAIL	BLACKTAIL COULEE										
Source Type:	SURFACE WATER											
*Source Name:	UNNAMED TRIBUTARY OF BLACKTAIL COULEE											
Source Type:	SURF	ACE W	/ATER									
*Point of Diversion and Means	s of Diversion	:										
ID	Govt Lo	<u>t</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>					
1 ***		TDIDI	S2SESE	22	32N	37E	VALLEY					
*Source Name:				ACKTAI	LCOUL	EE						
Period of Diversion:	MAY 1 TO											
Diversion Means:	LIVESTOCI	K DIRE	ECT FROM SC		001	075						
2 *Source Name:		TDIBI	W2NW JTARY OF BL/	26 ACKTAI	32N	37E	VALLEY					
Period of Diversion:	MAY 1 TO											
Diversion Means:			ECT FROM SC									
3			SWNW	26	32N	37E	VALLEY					
Source Name:	BLACKTAIL	_ COU		20	5211	07L						
Period of Diversion:	MAY 1 TO	осто	BER 1									
<b>Diversion Means:</b>	LIVESTOCI	k dire	ECT FROM SC	URCE								
4			NWNWSW	26	32N	37E	VALLEY					
*Source Name:	UNNAMED	TRIBL	JTARY OF BL	ACKTAI	L COUL	EE						
Period of Diversion:	MAY 1 TO	осто	BER 1									

June 24, 2025 400 30125247

<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE									
5		NE	27	32N	37E	VALLEY				
*Source Name:	UNNAMED TRIBUTARY OF BLACKTAIL COULEE									
Period of Diversion:	MAY 1 TO OCTOBER 1									
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE									
6		N2NE	27	32N	37E	VALLEY				
Source Name:	BLACKTAIL COULE	E								
Period of Diversion:	MAY 1 TO OCTOBE	R 1								
<b>Diversion Means:</b>	LIVESTOCK DIREC	T FROM SO	URCE							
7		NESENE	27	32N	37E	VALLEY				
Source Name:	BLACKTAIL COULE	E								
Period of Diversion:	MAY 1 TO OCTOBE	R 1								
<b>Diversion Means:</b>	LIVESTOCK DIREC	T FROM SO	URCE							
Period of Use:	MAY 1 TO OCTOBE	R 1								
4D1 011										

\*Place of Use:

ID	Acres	Govt Lot	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			S2SESE	22	32N	37E	VALLEY
2			W2NW	26	32N	37E	VALLEY
3			SWNW	26	32N	37E	VALLEY
4			NWNWSW	26	32N	37E	VALLEY
5			NE	27	32N	37E	VALLEY
6			N2NE	27	32N	37E	VALLEY
7			NESENE	27	32N	37E	VALLEY

#### **Remarks:**

# ABSTRACT OF WATER RIGHT CLAIM

# MILK RIVER, BELOW WHITEWATER INCLUDING PORCUPINE CREEK

Water Right Number:	400 3012	5249	STATEMENT	OF CLA	MIM						
U	Version:	2 P	OST DECREE	Ξ							
		Statu	s: ACTIVE								
Owners:	C/O JO E 1640 OLD	CARROLL MT PROPERTIES LLC C/O JO EVELYN MILLER 1640 OLD 421 S BOONE, NC 28607-6291									
Priority Date:	OCTOBEI	OCTOBER 25, 1915									
Type of Historical Right	: USE										
Purpose (Use):	STOCK										
*Flow Rate:	OF STOC THE FLO TO SUST	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:	STOCKW UNIT. AN	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:	BRUSH F	BRUSH FORK BEAR CREEK									
Source Type:	SURI	FACE W	ATER								
Point of Diversion and Means of Diversion:											
ID	<u>Govt L</u>	<u>ot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>				
1		00701	W2NESE	24	32N	37E	VALLEY				
Period of Diversion:	MAY 1 TC										
Diversion Means:	LIVESTO		CT FROM SC								
2 Period of Diversion:			E2NWSE	24	32N	37E	VALLEY				
Diversion Means:	WATTIC										
DIVERSION MEANS.		ם סוח אי									
	LIVESTO	CK DIRE	CT FROM SC		2201	27 <b>⊑</b>					
3			CT FROM SC SESE	OURCE 24	32N	37E	VALLEY				
3 Period of Diversion:	MAY 1 TC	OCTO	CT FROM SC SESE BER 1	24	32N	37E	VALLEY				
3	MAY 1 TC	OCTO	CT FROM SC SESE BER 1 CT FROM SC	24 DURCE							
3 Period of Diversion: Diversion Means:	MAY 1 TC	OCTOE CK DIRE	CT FROM SC SESE BER 1 CT FROM SC E2NE	24	32N 32N	37E 37E	VALLEY				
3 Period of Diversion: Diversion Means: 4	MAY 1 TC LIVESTOO MAY 1 TC	OCTOR CK DIRE	CT FROM SC SESE BER 1 CT FROM SC E2NE	24 DURCE 25							
3 Period of Diversion: Diversion Means: 4 Period of Diversion:	MAY 1 TC LIVESTOO MAY 1 TC	) OCTOE CK DIRE ) OCTOE CK DIRE	CT FROM SC SESE BER 1 CT FROM SC E2NE BER 1 CT FROM SC	24 DURCE 25							
3 Period of Diversion: Diversion Means: 4 Period of Diversion: Diversion Means:	MAY 1 TC LIVESTO MAY 1 TC LIVESTO	) OCTOE CK DIRE ) OCTOE CK DIRE	CT FROM SC SESE BER 1 CT FROM SC E2NE BER 1 CT FROM SC	24 DURCE 25							
3 Period of Diversion: Diversion Means: 4 Period of Diversion: Diversion Means: Period of Use: Place of Use:	MAY 1 TC LIVESTO MAY 1 TC LIVESTO	OCTOR CK DIRE OCTOR CK DIRE	CT FROM SC SESE BER 1 CT FROM SC E2NE BER 1 CT FROM SC	24 DURCE 25							
3 Period of Diversion: Diversion Means: 4 Period of Diversion: Diversion Means: Period of Use: Place of Use:	MAY 1 TO LIVESTOO MAY 1 TO LIVESTOO MAY 1 TO	OCTOR CK DIRE OCTOR CK DIRE	CT FROM SC SESE BER 1 CT FROM SC E2NE BER 1 CT FROM SC BER 1	24 DURCE 25 DURCE	32N	37E	VALLEY				
3 Period of Diversion: Diversion Means: 4 Period of Diversion: Diversion Means: Period of Use: Place of Use: <u>ID</u>	MAY 1 TO LIVESTOO MAY 1 TO LIVESTOO MAY 1 TO	OCTOR CK DIRE OCTOR CK DIRE	CT FROM SC SESE BER 1 CT FROM SC E2NE BER 1 CT FROM SC BER 1 CT FROM SC BER 1	24 DURCE 25 DURCE <u>Sec</u>	32N <u>Twp</u>	37E <u>Rge</u>	VALLEY <u>County</u>				

#### **Remarks:**

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# ABSTRACT OF WATER RIGHT CLAIM

# MILK RIVER, BELOW WHITEWATER INCLUDING PORCUPINE CREEK

## **BASIN 400**

Water Right Number:	400	30125250	STATEMENT	OF CLA	MM				
	Vers	sion: 2 P	OST DECREE	E					
		Statu	s: ACTIVE						
Owners:	CAF	ROLL MT PR	OPERTIES LL	C					
	C/O	JO EVELYN I	MILLER						
		0 OLD 421 S							
	BOC	DNE, NC 2860	7-6291						
Priority Date:	JUL	Y 6, 1921							
Type of Historical Right:	USE	E							
Purpose (Use):	STC	OCK							
*Flow Rate:	OF S THE	STOCK DRIN	KING DIRECTI IS LIMITED T	_Y FRC	M THE	SOURCE	BECAUSE THIS USE CONSISTS E, OR FROM A DITCH SYSTEM. JNT HISTORICALLY NECESSARY		
*Volume:	STC UNI	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:	BLA	CK COULEE							
Source Type:		SURFACE W	ATER						
Point of Diversion and M	leans of Di	version:							
ID	<u>(</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>		
1			NENW	26	32N	37E	VALLEY		
Period of Diversion:	MAY	1 TO OCTOR	BER 1						
<b>Diversion Means:</b>	LIVE	ESTOCK DIRE	CT FROM SO	URCE					
2			W2E2	26	32N	37E	VALLEY		
Period of Diversion:	MAY	1 TO OCTO	BER 1						
<b>Diversion Means:</b>	LIVE	ESTOCK DIRE	CT FROM SO	URCE					
3			E2	35	32N	37E	VALLEY		
Period of Diversion:	MAY	1 TO OCTO	BER 1						
<b>Diversion Means:</b>	LIVE	ESTOCK DIRE	CT FROM SO	URCE					
Period of Use:	MAY		BER 1						
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>	County		
1			NENW	26	32N	37E	VALLEY		
2			W2E2	26	32N	37E	VALLEY		
3			E2	35	32N	37E	VALLEY		

**Remarks:** 

# ABSTRACT OF WATER RIGHT CLAIM

# MILK RIVER, BELOW WHITEWATER INCLUDING PORCUPINE CREEK

Water Right Number:	400 30127	222	STATEMENT	OF CLA	MM						
	Version:	3 F	POST DECRE	E							
		Statu	is: ACTIVE								
Owners:	CARROLL I PO BOX 15 BOONE, NO	49	Y LTD PARTN 07	NERSHIF	D						
Priority Date:	FEBRUARY	′ 12, 1	931								
Type of Historical Right:	USE										
Purpose (Use):	STOCK										
*Flow Rate:	OF STOCK THE FLOW	DRIN RATE	KING DIRECT	LY FRO	M THE	SOURC	BECAUSE THIS USE CONSISTS E, OR FROM A DITCH SYSTEM. UNT HISTORICALLY NECESSARY				
*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:	MILK RIVE	२									
Source Type:	SURF/	ACE M	/ATER								
Point of Diversion and Means	of Diversion:										
ID	Govt Lot	<u>t</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	County				
1 Period of Diversion:	OCTOBER	1 TO	N2	8	30N	37E	VALLEY				
Diversion Means:			ECT FROM SO								
2	LIVESTOC		NENESE	8	30N	37E	VALLEY				
Period of Diversion:	OCTOBER	1 TO .		0	3011	572					
<b>Diversion Means:</b>	LIVESTOC	K DIRI	ECT FROM SC	OURCE							
3			NWNWSW	9	30N	37E	VALLEY				
Period of Diversion:	OCTOBER	1 TO .									
<b>Diversion Means:</b>	LIVESTOC	K DIRI	ECT FROM SC	OURCE							
4			NW	9	30N	37E	VALLEY				
Period of Diversion:	OCTOBER	1 TO .	JULY 1								
<b>Diversion Means:</b>	LIVESTOC	K DIRI	ECT FROM SC	OURCE							
5			E2SW	9	30N	37E	VALLEY				
Period of Diversion:	OCTOBER	1 TO .	JULY 1								
<b>Diversion Means:</b>	LIVESTOC	K DIRI	ECT FROM SO	OURCE							
Period of Use:	OCTOBER	1 TO .	JULY 1								

#### Place of Use:

ID	<u>Acres</u>	Govt Lot	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2	8	30N	37E	VALLEY
2			NENESE	8	30N	37E	VALLEY
3			NWNWSW	9	30N	37E	VALLEY
4			NW	9	30N	37E	VALLEY
5			E2SW	9	30N	37E	VALLEY

#### **Remarks:**

SPLIT CLAIM NO. 40O 30161313 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

THE POINT OF DIVERSION AND PLACE OF USE ARE LIMITED TO PRIVATE LAND.