

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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CLAIMANT: State of Montana Board of Land Commissioners

**CASE 41M-0011-I-2024**

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

41M 30109682

41M 30109683

**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) ("BIA") and the Blackfeet Tribe filed an objection to stock claims 41M 30109682 and 41M 30109683 stating the claimed legal land descriptions for the points of diversion and places of use were "overbroad."

Each claim appeared in the Interlocutory Decree with an issue remark providing notice that the claim missed the previous Basin 41M decree. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination. Montana law requires the Water Court to resolve objections and issue remarks.

On May 5, 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 noting lack of each claim's inclusion in the previous decree resolved?

### **Findings of Fact**

1. The historical point of diversion and place of use identified by stock claim 41M 30109682 should be refined to Lots 1-4 of Section 36, Township 30 North, Range 6 West, Pondera County.

2. The historical point of diversion and place of use identified by stock claim 41M 30109683 should be refined to the S2NE, SE and Lot 2 of Section 36, Township 30 North, Range 6 West, Pondera County.

### **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 the refinement of the point of diversion and place of use legal land descriptions for livestock direct from source claims 41M 30109682 and 41M 30109683.

### **Conclusions of law**

The evidence entered into the record is a reduction within the parameters of statements of claim 41M 30109682 and 41M 30109683, justifies the modifications to the

claims, and resolves the BIA's objection to each claim. The stipulated terms should be accepted by the court.

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

Stock claims 41M 30109682 and 41M 30109683 are existing right 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 timely filed exempt claims.

The claims appeared in the Preliminary Decree with the following issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 40N DECREE ISSUED 08/13/1985.

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

## **Conclusions of Law**

The notice issue remark concerning lack of the claims' inclusion in the previous decree served its purpose.

## **Recommendations**

Stock claim 41M 30109682 should be modified as follows to accurately reflect historical use.

### **PLACE OF USE AND POINT OF DIVERSION:**

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
1	N2N2	36	30N	6W	PONDERA
2		36	30N	6W	PONDERA
3		36	30N	6W	PONDERA
4		36	30N	6W	PONDERA

Stock claim 41M 30109683 should be modified as follows to accurately reflect historical use.

**PLACE OF USE AND POINT OF DIVERSION:**

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
S2NE	E2	36	30N	6W	PONDERA
	SE	36	30N	6W	PONDERA
2		36	30N	6W	PONDERA

The notice issue remark should be removed from the claim abstracts.

Post Decree Abstracts of Water Right Claim accompany this report to confirm the recommendations have been implemented in the state's centralized water right record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via Electronic Mail**

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**Service List Updated 6/19/2025**

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

**Water Right Number:** 41M 30109682 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** MONTANA STATE BOARD OF LAND COMMISSIONERS  
FORESTRY AND TRUST LANDS DIVISION  
PO BOX 201601  
HELENA, MT 59620-1601

**Priority Date:** NOVEMBER 8, 1889

**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:** 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	1		36	30N	6W	PONDERA

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2	2		36	30N	6W	PONDERA
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

3	3		36	30N	6W	PONDERA
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

4	4		36	30N	6W	PONDERA
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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		1		36	30N	6W	PONDERA
2		2		36	30N	6W	PONDERA
3		3		36	30N	6W	PONDERA

4 4 36 30N 6W PONDERA

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

**Water Right Number:** 41M 30109683 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** MONTANA STATE BOARD OF LAND COMMISSIONERS  
FORESTRY AND TRUST LANDS DIVISION  
PO BOX 201601  
HELENA, MT 59620-1601

**Priority Date:** NOVEMBER 8, 1889

**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:** DUPUYER CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2NE	36	30N	6W	PONDERA

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		SE	36	30N	6W	PONDERA
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

3	2		36	30N	6W	PONDERA
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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</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			S2NE	36	30N	6W	PONDERA
2			SE	36	30N	6W	PONDERA
3		2		36	30N	6W	PONDERA