

MONTANA WATER COURT
UPPER MISSOURI DIVISION
TWO MEDICINE RIVER
BASIN 41M

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CLAIMANT: Blackfeet Tribe

OBJECTOR: Pondera County Canal & Reservoir Co.

CASE 41M-0325-P-2017
41M 153732-00

ORDER ACCEPTING STIPULATION AND CLOSING CASE

Background

41M 153732-00, is owned by the Blackfeet Tribe. The claim is for 57.00 acres of irrigation from Birch Creek with a headgate on the B Canal. The claim was included in the Preliminary Decree issued on March 20, 2015. An objection was filed to the claim by Pondera County Canal & Reservoir Co. ("PCCRC"). The case was consolidated to address PCCRC's objections and the issue remarks added to the claim as a result of examination by the Department of Natural Resources and Conservation ("DNRC"). (Doc. 1.00). The claim was subject to the following issue remarks:

USE OF THE B CANAL TO CONVEY WATER TO THE PLACE OF USE MAY BE QUESTIONABLE.

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE. THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 153732-00, 120074-00, 185684-00, 199803-00.

THE PONDERA COUNTY WATER RESOURCE SURVEY (1964) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

USDA AERIAL PHOTOGRAPH NO(S). 282-229, DATED 09/22/1979, APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

IT IS NOT CLEAR WHETHER THIS CLAIM IS A STATE-BASED WATER RIGHT OR PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE BLACKFEET TRIBE-MONTANA COMPACT. ADDITIONAL EVIDENCE MAY BE REQUIRED BEFORE THIS CLAIM CAN BE DECREED.

On November 7, 2025, the parties filed a Stipulation for Resolution of Objections and Issue Remarks (“Stipulation”). (Doc. 73.00). The Stipulation provides background concerning the claim. It states that the place of use is located off the Blackfeet Reservation on the south side of Birch Creek. *Id.* The place of use was part of the land patented to John Hall and is based on the John Hall Notice of Appropriation filed on July 7, 1900. *Id.* Hall was a non-Indian settler who married into the Blackfeet Tribe. *Id.*

Pursuant to the Stipulation, the parties agreed that the following modifications should be made to resolve the issue remarks and objections:

Point of Diversion:

ID		QTR SEC	SEC	TWP	RGE
1	NWNWSE	NENWSW	27	29N	8W

Ditch Name: ~~B-Canal~~ Hall-Stewart-Leech Ditch

Remove Remark:

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

Add Remark:

THIS CLAIM IS SUBJECT TO THE TERMS OF AN AGREEMENT ON FILE WITH THE MONTANA WATER COURT.

The parties also agreed to several other provisions including that the claim is a state-based right not a part of the Tribal Water Right as defined in the Blackfeet Water Rights Compact. *Id.*

Applicable Law

The Water Court is required to resolve all issue remarks that are not resolved through the objection process. Mont. Code Ann. § 85-2-248(2) (2025); Rule 7, Water Right Adjudication Rules. The Water Court is also not bound by parties’ settlement agreements. Any settlement agreement reached by parties is subject to review and approval by the Water Court pursuant to Rule 17(a), W.R.Adj.R.

Analysis

The Settlement Agreement provides sufficient information to resolve the issue remarks. The issue remark concerning use of the B Canal is resolved based on the agreement that the point of diversion is changed to the Hall-Stewart-Leech Ditch. The issue remarks concerning the type of right and combined flow rate are resolved based on the withdrawal of 41M 120074-00 and 41M 199803-00 in separate proceedings, and the withdrawal of 41M 185684-00 prior to the issuance of the Preliminary Decree. The Stipulation identifies the affidavits contained in the claim file and explains the history of the claim, which resolves the acres irrigated issue remarks. Further, the issue remarks questioning whether the claim is a state-based right is also resolved based on information provided in the Stipulation, that the claim is not based on the Blackfeet Water Rights Compact.

The Stipulation has been reviewed and is approved. Rule 17(a), W.R.Adj.R. The Stipulation provides sufficient information to resolve the issue remarks pursuant to Section 85-2-248, MCA. The Stipulation also resolves the objections of PCCRC.

Therefore, it is

ORDERED that the Stipulation is approved to resolve the Preliminary Decree objections and issue remarks concerning 41M 153732-00.

ORDERED that the following corrections are made to claim 41M 153732-00:

Point of Diversion:

ID		QTR SEC	SEC	TWP	RGE
1	NWNWSE	NENWSW	27	29N	8W

Ditch Name: ~~B-Canal~~ Hall-Stewart-Leech Ditch

Remove Remark:

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

Add Remark:

THIS CLAIM IS SUBJECT TO THE TERMS OF AN AGREEMENT ON FILE WITH
THE MONTANA WATER COURT.

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

Water Right Number: 41M 153732-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: BLACKFEET TRIBE
PO BOX 850
BROWNING, MT 59417

Priority Date: JULY 7, 1900

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 2.16 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 57.00

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		NWNWSE	27	29N	8W	PONDERA

Period of Diversion: MAY 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: HALL-STEWART-LEECH DITCH

Period of Use: MAY 1 TO OCTOBER 15

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	2.00		NESWNE	12	29N	8W	PONDERA
2	10.00		SWNENW	12	29N	8W	PONDERA
3	5.00		SENWNW	12	29N	8W	PONDERA
4	20.00		SENW	12	29N	8W	PONDERA
5	20.00		E2SWNW	12	29N	8W	PONDERA

Total: 57.00

Remarks:

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

THIS CLAIM IS SUBJECT TO THE TERMS OF AN AGREEMENT ON FILE WITH THE MONTANA WATER COURT.