

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: Ila D. Agee; Wayne R. Agee

CASE 41M-0002-I-2024

41M 30113074

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

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 above captioned domestic claim is before this court due to the combination of objections from the Blackfeet Tribe and the United States of America (Bureau of Indian Affairs), and an issue remark placed on the claim during claims examination by the Department of Natural Resources and Conservation (DNRC).

All elements of the claim appeared on the Basin 41M Interlocutory Decree objection list.

On August 28, 2025 the parties filed a Stipulation for the Resolution of Objections.

Issues

1. Are the objections resolved?
2. Is the issue remark resolved?

Findings of fact

1. Domestic claim 41M 30113074 appeared in the Interlocutory Decree for Basin 41M as a use right with a December 31, 1800 priority date.

2. The parties stipulated to a reduced priority date of November 8, 1889.

3. Domestic claim 41M 30113074 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.

Domestic claim 41M 30113074 is an existing right for groundwater. The claim meets 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 claim is an exempt claim timely filed after issuance of the previous decree for Basin 41M.

Water users were given the opportunity to review the claim and file an objection. The only objections filed against the claim were resolved during these proceedings. The referenced notice issue remark served its purpose.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right or an amended 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 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. The Montana 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.

4. 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.

5. 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.

Conclusions of law

There is no burden of proof to meet as the stipulated modification is a reduction and the issue remark is resolved. The agreed upon modification should be made to the claim thereby resolving the objections to the claim.

Recommendations

Based upon the foregoing, claim 41M 30113074 should be modified as follows to accurately reflect historical use.

PRIORITY DATE: ~~DECEMBER 31, 1800~~ **NOVEMBER 8, 1889**

The issue remark appearing on the claim abstract should be removed.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm implementation of the recommendations in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

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

Water Right Number: 41M 30113074 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: ILA D AGEE
PO BOX 197
DUPUYER, MT 59432

WAYNE R AGEE
PO BOX 197
DUPUYER, MT 59432

Priority Date: NOVEMBER 8, 1889

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 20.00 GPM

Volume: 4.00 AC-FT

Households: 1

Maximum Acres: 1.00

Source Name: GROUNDWATER

Source Type: GROUNDWATER

***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		SWNE	33	28N	8W	PONDERA

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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	1.00		SWNE	33	28N	8W	PONDERA

Total: 1.00