

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

MONTANA WATER COURT  
UPPER MISSOURI DIVISION  
SMITH RIVER  
BASIN 41J  
INTERLOCUTORY DECREE

\*\*\*\*\*

CLAIMANT: Kicking Bull LLC

OBJECTOR: United States, DOA Forest Service

CASE 41J-0006-I-2025  
41J 30135551

**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, DOA Forest Service (“Forest Service”) filed an objection to stock claim 41J 30135551.

Stock claim 41J 30135551 appeared in the Basin 41J Interlocutory Decree with the following issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41J DECREE ISSUED 12/16/2010.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 01/11/2023, THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY USDA FOREST SERVICE, PO BOX 130 BOZEMAN MT 59771-0130.

THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE. PART OR ALL OF THE PLACE OF USE APPEARS TO BE ON FEDERAL LAND.

Issue remarks most often result from Department of Natural Resources and Conservation (“DNRC”) claims examination. If claims examination cannot confirm an element of a claim based upon historical resources, or water right claim examination rules require identification of an issue, an issue remark is added to the claim.

Montana law requires the Water Court to resolve issue remarks and objections.

The Water Master held a status conference on September 30, 2025. Present were attorneys Judith E. Coleman and Daniel Luecke, for objector the United States, DOA Forest Service (“Forest Service”). Claimant Kicking Bull LLC failed to appear.

The Forest Service moved, with leave of court pursuant to Rule 16(a), W.R.Adj.R., for claim 41J 30135551 to be dismissed based upon the claim examination materials for the claim and the objection to the claim.

Pursuant to Rule 22, W.R.Adj.R., a deadline was set for Kicking Bull LLC to Show Cause why the claim should not be dismissed. Kicking Bull LLC did not respond by the deadline.

**Issue**

Should stock claim 41J 30135551 be dismissed?

**Finding of fact**

Stock claim 41J 30135551 should be dismissed.

**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 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. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. When a claimant fails to comply with an Order issued by the Water Court, including an order issued by a Water Master appointed by the Court, the Court upon its own initiative or upon motion, can among other actions: 1) modify the elements of the claim to conform with the information in the claim file, information obtained by the Court, or information included in an objection, or 2) terminate the claim. Rule 22, W.R.Adj.R.

## **Analysis**

### **Requested sanction and objection resolution - dismissal of claim 41J 30135551**

The Forest Service filed an objection to stock claim 41J 30135551 stating, “Claim examination materials indicate that this claim was filed as a duplicate of 41J 30135547, which identifies only private land. S2SE Section 30 is federal land for which neither Kicking Bull nor its predecessor has a grazing permit. This claim should be dismissed.”

Based upon the objection, the place of use and point of diversion for livestock direct from source claim 41J 30135551 is located on Forest Service property. No grazing permit exists for claimant to use water on this federal land, and the lands are unavailable for grazing livestock. Furthermore, the objection and claim examination materials indicate claim 41J 30135551 is a duplicate claim that should be dismissed.

The Forest Service’s objection and the claims examination material are in the claim file and may be viewed at <https://gis.dnrc.mt.gov/apps/WRQS/>.

### **Conclusions of law**

Based upon the claim examination materials, the Forest Service’s objection, and Kicking Bull LLC’s repeated failure to comply with orders issued by the Water Master, the requested sanction, dismissal of claim 41J 30135551, appears just. The dismissal of claim 41J 30135551 resolves the Forest Service’s objection and moots the issue remarks appearing on the claim.

### **Recommendation**

Stock claim 41J 30135551 should be dismissed.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm dismissal of the claim in the state’s centralized water right record system.

**ELECTRONICALLY SIGNED AND DATED BELOW**

**Service Via USPS Mail:**

Kicking Bull LLC  
PO Box 1866  
Bozeman MT 59771-1866

**Service Via Electronic Mail:**

Judith E. Coleman  
Daniel Luecke  
US Dept of Justice, ENRD-NRS  
judith.coleman@usdoj.gov  
daniel.luecke@usdoj.gov  
MontanaBasins.ENRD@USDOJ.GOV  
(Attys for: United States, DOA Forest Service)

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SMITH RIVER  
BASIN 41J**

**Water Right Number:** 41J 30135551 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** KICKING BULL LLC  
PO BOX 1866  
BOZEMAN, MT 59771-1866

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** STOCK

**Flow Rate:**

**Volume:**

**Source Name:** DITCH CREEK

**Source Type:** SURFACE WATER

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

**Period of Use:**

**Place of Use:**

---

**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.