

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

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CLAIMANT: Springdale Colony

OBJECTOR: Montana State Board of Land Commissioners –  
Forestry and Trust Lands Division

**CASE 41J-0009-I-2025**  
41J 30135075  
**Implied Claim:**  
**41J 30175656**

**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 have **13 days** from the service date of the notice of filing of this report to file a written objection or request an extension of the objection period. Rule 23, Water Right Adjudication Rules; Rule 6, Montana Rules of Civil Procedure. 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**

**FINDINGS OF FACT**

1. Stock claim 41J 30135075 appeared in the Interlocutory Decree for Basin 41J 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 12/12/2022, A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY THE STATE OF MONTANA, 1625 11TH AVENUE, HELENA, MT 59601-4600.

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

2. Stock claim 41J 30135075 is a use right with a June 2, 1958 priority date. The claim identifies its points of diversion and places of use in Sections 24, 25, and 26 of T8N, R5E.

3. The claim received an ownership objection from the Montana State Board of Land Commissioners – Forestry and Trust Lands Division (“Trust Lands”).

4. On April 3, 2026, Trust Lands filed a Proposed Resolution of Objection. Claimant Springdale Colony did not object to the resolution proposed by Trust Lands. Trust Lands’ proposed resolution is supported by information attached to Trust Lands’ objection (*See* claim file) and its Proposed Resolution of Objection which confirms the NE of Section 26, T8N, R5E was withdrawn from the public domain, with title to this ground vesting in the State of Montana on November 4, 1919, the approval date of the Clear List including this parcel. By the time of the appropriation in 1958, title to this ground was fully vested in the State as school trust property. The proposed resolution requests generation of an implied claim for the State of Montana as a portion of this claim is for water diverted and used on state land. Although Springdale Colony was the appropriator of this water right, the owner of the portion of this water right used on the NENE of Section 26, T8N, R5E is the State of Montana as the owner of school trust properties. An implied claim should be generated for the portion owned by the State of Montana. The portion of claim 41J 30135075 owned by Springdale Colony shall retain claim number 41J 30135075. The portion of claim 41J 30135075 owned by the State of Montana shall be claim number 41J 30175656.

Trust Lands’ Proposed Resolution of Objection included aerial photos depicting the point of diversion and place of use for each claim, the same information attached to Trust Lands’ objection, and proposed abstracts. Trust Lands’ Proposed Resolution of

Objections and its attachments may be viewed on the court's case management system, FullCourt Enterprise, at document sequence 9.00.

For claim 41J 30135075, the point of diversion and place of use should be changed by deleting the parcel in the NENE of Section 26, T8N, R5E.

For implied claim 41J 30175656, the elements should be the same as 41J 30135075, except the owner is Trust Lands and the point of diversion and place of use should be the NENE of Section 26, T8N, R5E.

5. The proposed resolution resolves the ownership issue remarks on stock claim 41J 30135075. The issue remark noting the lack of the claim's inclusion in the previous Basin 41J decree provided water users the opportunity to review the claim and file an objection. The deadline to file objections expired. The only objection filed to the claim is resolved by these case proceedings. The issue remark noting the lack of the claim's inclusion in the previous Basin 41J decree served its notice purpose. All issue remarks on the claim should be removed.

### **CONCLUSIONS OF LAW**

1. The Montana Water Court has jurisdiction over all matters relating to the determination of existing water rights. Section 3-7-224, MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-222, 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.

3. 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.

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.

6. If, at the time an appropriation is made, the appropriator is a lessee of school trust land and if the lessee makes and uses the appropriation on school trust land, the appropriation is owned by the State of Montana rather than the lessee. *Department of State Lands v. Pettibone*, 216 Mont. 361, 702 P.2d 948 (1985). Implicit in this rule is the determination that the land was indeed fully vested as state school trust land at the time the appropriation was made. See *Harper, et al. v. Montana, State of, Board of Land Commissioners*, Case 43A-A, at p. 10-13, (Memorandum June 29, 2000); *Hamilton Ranches Partnership v. United States of America, et al.*, Case 41G-190, at p. 32 (Opinion July 19, 2005); and *Huckaba Ranch, Inc. v. Golden Sunlight Mines, Inc.*, Case 41G-3, at p. 7-9, (Opinion August 3, 2005).

7. The settlement documentation and evidence entered into the record is sufficient to contradict and overcome the content of the prima facie claim, justifies the changes to the claim, resolves the objection filed to the claim, and resolves the issues noted by remarks on the claim. Rule 17, W.R.Adj.R.

### **RECOMMENDATIONS**

Based upon the above Findings of Fact and Conclusions 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. Post Decree Abstracts of Water Right Claim accompany this Report to confirm that the recommended changes have been made in the state's centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via USPS Mail**

Springdale Colony  
770 Birky Rd  
White Sulphur Springs MT 59645-9503

**Service Via Electronic Mail**

Kelley Lewis  
Clare Ols  
KLH Advisors PLLC  
klh@klhadvisors.com  
clare@klhadvisors.com  
admin@klhadvisors.com  
*(Attys for: Montana State Board of Land Commissioners – Forestry and Trust Lands Division)*

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

**Water Right Number:** 41J 30135075 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** SPRINGDALE COLONY INC  
770 BIRKY RD  
WHITE SULPHUR SPRINGS, MT 59645-9503

**Priority Date:** JUNE 2, 1958

**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:** COOKS CREEK, SOUTH FORK

**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		NE	24	8N	5E	MEAGHER
<b>Period of Diversion:</b>	MARCH 1 TO DECEMBER 1					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		SE	24	8N	5E	MEAGHER
<b>Period of Diversion:</b>	MARCH 1 TO DECEMBER 1					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		NW	25	8N	5E	MEAGHER
<b>Period of Diversion:</b>	MARCH 1 TO DECEMBER 1					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4		NWSW	25	8N	5E	MEAGHER
<b>Period of Diversion:</b>	MARCH 1 TO DECEMBER 1					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5		SESE	26	8N	5E	MEAGHER
<b>Period of Diversion:</b>	MARCH 1 TO DECEMBER 1					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
<b>Period of Use:</b>	MARCH 1 TO DECEMBER 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>	<u>County</u>
1			NE	24	8N	5E	MEAGHER
2			SE	24	8N	5E	MEAGHER
3			NW	25	8N	5E	MEAGHER
4			NWSW	25	8N	5E	MEAGHER
5			SESE	26	8N	5E	MEAGHER

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**Remarks:**

IMPLIED CLAIM NO. 41J 30175656 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

**Water Right Number:** 41J 30175656 STATEMENT OF CLAIM

**Version:** 1 -- ORIGINAL RIGHT

**Status:** ACTIVE

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

**Priority Date:** JUNE 2, 1958

**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:** UNNAMED TRIBUTARY OF COOKS CREEK, SOUTH FORK

**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		NENE	26	8N	5E	MEAGHER

**Period of Diversion:** MARCH 1 TO DECEMBER 1

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** MARCH 1 TO DECEMBER 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>	<u>County</u>
1			NENE	26	8N	5E	MEAGHER

**Remarks:**

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41J 30135075.