

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

\*\*\*\*\*

CLAIMANT: Keyhole Cattle Co.

OBJECTOR: United States, DOA Forest Service

CASE 41J-0005-I-2025

41J 30121206

41J 30121211

**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**

**Statement of the case**

The United States, DOA Forest Service (“Forest Service”) filed objections to the place of use and point of diversion for the captioned stock claims.

The captioned stock claims appeared in the Basin 41J Interlocutory Decree with the following issue remark:

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

Issue remarks most often result from Department of Natural Resources and Conservation (“DNRC”) claims examination. An issue remark may simply provide notice to water users concerning a claim, as does the above noted issue remark.

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 Donna Dupea, President of Keyhole Cattle Co. (“Keyhole”), and attorneys Judith E. Coleman and Daniel Luecke for objector the United States, DOA Forest Service (“Forest Service”). Also in attendance was Mike Blair, the individual who filed the statements of claim for the captioned claims.

The parties agreed to a 30-day comment period for Keyhole to state whether it agreed with the resolution proposed by the Forest Service’s objections to the claims. The order setting the 30-day comment period included language stating that if Keyhole did not file a comment by the deadline, it would be deemed its agreement with the modifications included on the proposed abstracts included with the Forest Service’s objections. Keyhole did not comment by the deadline.

## **Issues**

1. Should the captioned stock claims be modified as proposed by the Forest Service to resolve its objections?
2. Is the notice issue remark on each claim resolved?

## **Findings of fact**

The captioned stock claims should be modified as proposed by the Forest Service’s resolution of objections. Specifically:

- the point of diversion and place of use for stock claim 41J 30121206 should be refined to the S2S2 of Section 1, the NENW of Section 12, and the E2NE of

Section 11, all in Township 13 North, Range 5 East, and

- the point of diversion and place of use for stock claim 41J 30121211 should be refined to the SW of Section 1, and the S2SE of Section 2, and the NE of Section 11, all in Township 13 North, Range 5 East.

### **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 85-2-222, 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.

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**

### **Issues 1 and 2 - Objection and issue remark resolution**

The Forest Service filed objections to stock claims 41J 30121206 and 41J 30121211 stating that the point of diversion and place of use should match the map attached to each statement of claim. The Forest Service's objection to each claim, along with proposed abstracts and maps attached to each objection, are in the claim files and may be viewed at <https://gis.dnrc.mt.gov/apps/WRQS/>.

The agreed upon modifications result in refined legal land descriptions for the point of diversion and place of use.

The claims appeared in the Interlocutory Decree with the following issue remark:  
THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41J DECREE ISSUED 12/26/2010.

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

### **Conclusions of law**

The agreed upon modifications are reductions within the parameters of the statements of claim, justify the modifications to the claims, and resolve the Forest Service's objections.

The issue remark on each claim noting the lack of the claim's inclusion in the previous Basin 41J decree served its notice purpose.

### **Recommendations**

Stock claim 41J 30121206 should be modified as follows to accurately reflect historical use.

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

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	S2S2	1	13N	5E	MEAGHER
	NEN <del>WNW</del>	12	13N	5E	MEAGHER
	E2NE	11	13N	5E	MEAGHER

Stock claim 41J 30121211 should be modified as follows to accurately reflect historical use.

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

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	SW	1	13N	5E	MEAGHER
	S2SE	2	13N	5E	MEAGHER
	NE	11	13N	5E	MEAGHER

The notice issue remark should be removed from the abstracts.

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

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via USPS Mail:**

Keyhole Cattle Co  
303 Birch Creek Rd  
White Sulphur Springs, MT 59645

**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 30121206 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** KEYHOLE CATTLE CO  
303 BIRCH CREEK RD  
WHITE SULPHUR SPRINGS, MT 59645

**\*Priority Date:** DECEMBER 31, 1964

**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 WOODS CREEK

**Source Type:** SURFACE WATER

THIS WATER RIGHT ALSO INCLUDES SURFACE WATER FROM AN UNDEVELOPED SPRING.

**\*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		S2S2	1	13N	5E	MEAGHER

**Period of Diversion:** MAY 15 TO OCTOBER 15

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		NENW	12	13N	5E	MEAGHER
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**Period of Diversion:** MAY 15 TO OCTOBER 15

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

3		E2NE	11	13N	5E	MEAGHER
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**Period of Diversion:** MAY 15 TO OCTOBER 15

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** MAY 15 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			S2S2	1	13N	5E	MEAGHER
2			NENW	12	13N	5E	MEAGHER
3			E2NE	11	13N	5E	MEAGHER

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

**Water Right Number:** 41J 30121211 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** KEYHOLE CATTLE CO  
303 BIRCH CREEK RD  
WHITE SULPHUR SPRINGS, MT 59645

**\*Priority Date:** DECEMBER 31, 1964

**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 WOODS CREEK

**Source Type:** SURFACE WATER

THIS WATER RIGHT ALSO INCLUDES SURFACE WATER FROM AN UNDEVELOPED SPRING, ALSO KNOWN AS CLEAR CUT SPRING.

**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		SW	1	13N	5E	MEAGHER
<b>Period of Diversion:</b>		MAY 15 TO OCTOBER 15				
<b>Diversion Means:</b>		LIVESTOCK DIRECT FROM SOURCE				
2		S2SE	2	13N	5E	MEAGHER
<b>Period of Diversion:</b>		MAY 15 TO OCTOBER 15				
<b>Diversion Means:</b>		LIVESTOCK DIRECT FROM SOURCE				
3		NE	11	13N	5E	MEAGHER
<b>Period of Diversion:</b>		MAY 15 TO OCTOBER 15				
<b>Diversion Means:</b>		LIVESTOCK DIRECT FROM SOURCE				

**Period of Use:** MAY 15 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			SW	1	13N	5E	MEAGHER
2			S2SE	2	13N	5E	MEAGHER
3			NE	11	13N	5E	MEAGHER