

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

MONTANA WATER COURT  
LOWER MISSOURI DIVISION  
JUDITH RIVER  
BASIN 41S  
PRELIMINARY DECREE

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CLAIMANT: Montana Holdings, Inc.; **Montana State Board of  
Land Commissioners - Forestry and Trust  
Lands Division**

**CASE 41S-2087-R-2025**  
41S 101545-00

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

**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. Montana Holdings Inc. stock claim 41S 101545-00 was decreed

without issue remarks.

2. The Montana State Board of Land Commissioners - Forestry and Trust Lands Division (MBLC) objected to claim 41S 101545-00 based on “ownership” and “other: redundant claim”, stating:

Pettibone applies. The POD/POU is on land that was acquired by the State on 11/8/1889 (Patent Book vol. 2, pg. 301). The GL survey was accepted 1/22/1884). The priority date of this claim is 12/31/1947.

This claim should be withdrawn as it's redundant with MSBLC claim 41S 21653-00.

3. A conference was conducted on October 16, 2025. Counsel for MBCL appeared at the conference and explained, consistent with the Objection, claim 41S 101545-00 is redundant with claim 41S 21653-00, and claim 41S 101545-00 should be dismissed. Additional time was requested to file supporting documentation. The Claimant failed to appear at the conference.

4. On February 6, 2026, MBLC filed a Motion to Amend its Objection to claim 41S 101545-00. The basis of the Motion to Amend Objection is that claim MBLC should be a co-owner of claim 41S 101545-00, rather than claim 41S 101545-00 being dismissed as redundant to MBLC claim 41S 21653-00.

As described by MBLC in the Motion to Amend Objection:

Ownership of a water right diverted or developed for beneficial use on State of Montana school trust land vests in the State. *Dep't of State Lands v. Pettibone*, 216 Mont. 361, 368, 702 P.2d 948, 952 (1985). As depicted on the map attached hereto as Exhibit A, Section 16, Township 19 North, Range 18 East, Judith Basin County (the “Trust Lands”). The Trust Lands were acquired by the State on November 8, 1889, as stated in the patent attached hereto as Exhibit B. The foregoing documentation supports MBLC’s objection that the point of diversion and place of use are located on State of Montana trust lands and, therefore, under Pettibone, MBLC is the proper owner of the Claim.

MBLC’s Water Right Claim 41S 21653-00 was filed by MBLC on July 5, 1981, claiming the same point of diversion and place of use as the Claim at issue here, but a July 1, 1953, priority date. Documentation available in the claim files indicates that Water Right Claim 41S 21653-00 is not redundant with the Claim, but rather a distinct appropriation from the same well. See the Affidavit of E.R. Fordyce dated April 8 1981, attached hereto as Exhibit C, and the Affidavit of Ray Fordyce dated October 16, 1981, attached hereto as Exhibit D. Accordingly, MBLC moves, pursuant to Mont. Code Ann. § 85-2-233(6) and Rule 10 of the Montana Water Right Adjudication Rules, to partially amend its objection to the Claim and remove the portion thereof requesting the Claim be dismissed for being redundant with Water Right Claim 41S 21653-00.

(Doc.<sup>1</sup> 5.00). Therefore, MBLC moved to amend its original Objection to remove the portion requesting dismissal of claim 41S 21653-00.

5. Claimant Montana Holdings Inc. did not respond to the Motion.

#### PRINCIPLES OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. Prima facie proof may be 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 can 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. 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 Shields River Basin*, 2000 Mont. Water LEXIS 1 at \*\*20-26 (Jun. 29, 2000); *In re Adjudication of the Existing Rights to Use of All the Water (Jefferson River Basin)*, 2005 Mont. Water LEXIS 9 at \*\*48-49 (Jul. 19, 2005); and *In re*

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<sup>1</sup> “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

*Adjudication of the Existing Rights to Use of All the Water (Jefferson River Basin), 2005*  
Mont. Water LEXIS 1 at \*\*12-16 (Aug. 3, 2005).

CONCLUSION OF LAW

1. The co-ownership for claim 41S 101545-00 is supported by evidence in the record, justifying the correction to ownership, and resolves MBLC's Objection to the claim.

RECOMMENDATIONS

1. MBLC should be added as a co-owner of claim 41S 101545-00.
2. The Objection to claim 41S 101545-00 should be dismissed.

An abstract is attached.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via USPS Mail:**

Montana Holdings, Inc.  
13411 Salt Creek Rd  
Hilger, MT 59451-9602

**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)**

***Last Order:***

Brian C. Bramblett  
Montana Department of Justice  
Agency Legal Services Bureau  
bbramblett@mt.gov  
jean.saye@mt.gov  
(Atty for: Montana State Board of Land Commissioners – Forestry and Trust Lands Division)

***\*Service List Updated 2-23-2026\****

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
JUDITH RIVER  
BASIN 41S**

**Water Right Number:** 41S 101545-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** MONTANA HOLDINGS INC  
13411 SALT CREEK RD  
HILGER, MT 59451-9602  
  
MONTANA STATE BOARD OF LAND COMMISSIONERS  
FORESTRY AND TRUST LANDS DIVISION  
PO BOX 201601  
HELENA, MT 59620-1601

**Priority Date:** DECEMBER 31, 1947

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 20.00 GPM

**\*Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING 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:** 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		NWNESW	16	19N	18E	FERGUS

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

**Diversion Means:** WELL

**Period of Use:** APRIL 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			NWNESW	16	19N	18E	FERGUS