

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

CLAIMANT: Dana Ranch Co. Inc.

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

CASE 41J-0007-I-2025

41J 30135969

41J 30136117

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 30135969 appeared in the Interlocutory Decree for Basin 41J with the following issue remark:

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

2. Stock claim 41J 30136117 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 04/08/2023, THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY MONTANA BOARD OF LAND COMMISSIONERS, TRUST LAND MANAGEMENT DIVISION, PO BOX 201601, HELENA, MT 59620-1601.

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

3. Stock claims 41J 30135969 and 41J 30136117 are use rights with an April 21, 1898 priority date. The claims identify their points of diversion and places of use in Section 36, T15 North, Range 1 East.

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

5. On March 20, 2026, Trust Lands filed a Statement and Unopposed Motion to Resolve Objections. Dana Ranch Co. concurred in the resolution proposed by Trust Lands. Trust Lands’ Motion is supported by information attached to Trust Lands’ objections which confirms the entirety of Section 36, Township 15 North, Range 1 East was withdrawn from the public domain at statehood via the Enabling Act and the survey of this ground was approved by the Surveyor General on April 6, 1893, with title to this ground vesting in the State of Montana on the same date. By the time of these appropriations in 1898, title to this ground was fully vested in the State as school trust property. Although the predecessor in interest of Dana Ranch Co. was the appropriator of this water right, the owner of these water rights is the State of Montana as the owner of school trust properties. The ownership should be corrected from Dana Ranch Co. to Trust Lands.

6. The Motion resolves the ownership issue remarks on stock claim 41J 30136117. The issue remark noting the lack of each claim’s inclusion in the previous Basin 41J decree provided water users the opportunity to review the claims and file an objection. The deadline to file objections expired. The only objections filed to the

claims are resolved by these case proceedings. The issue remark noting the lack of the claims' inclusion in the previous Basin 41J decree served its notice purpose. All issue remarks on the claims 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 claims, justifies the changes to the claims, resolves the objections filed to the claims, and resolves the issues noted by remarks on the claims. 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:

Dana Ranch Co Inc
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Service Via Electronic Mail:

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(Atty for: *Montana State Board of Land Commissioners – Forestry and Trust Lands Division*)

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

Water Right Number: 41J 30135969 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

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

Priority Date: APRIL 21, 1898

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: CROOKED CREEK

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		SE	36	15N	1E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		NE	36	15N	1E	CASCADE
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3		NESE	36	15N	1E	CASCADE
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

4		E2SW	36	15N	1E	CASCADE
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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			SE	36	15N	1E	CASCADE
2			NE	36	15N	1E	CASCADE
3			NESE	36	15N	1E	CASCADE

4

E2SWSE 36 15N 1E CASCADE

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

Water Right Number: 41J 30136117 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

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

Priority Date: APRIL 21, 1898

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: HOUND CREEK

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		N2SENE	36	15N	1E	CASCADE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		S2NENE	36	15N	1E	CASCADE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		S2NWNW	36	15N	1E	CASCADE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		S2NENW	36	15N	1E	CASCADE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		SWNW	36	15N	1E	CASCADE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
6		NWNWSW	36	15N	1E	CASCADE
Period of Diversion:	JANUARY 1 TO DECEMBER 31					

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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			N2SENE	36	15N	1E	CASCADE
2			S2NENE	36	15N	1E	CASCADE
3			S2NWNE	36	15N	1E	CASCADE
4			S2NENW	36	15N	1E	CASCADE
5			SWNW	36	15N	1E	CASCADE
6			NWNWSW	36	15N	1E	CASCADE