

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

MONTANA WATER COURT
UPPER MISSOURI DIVISION
TETON RIVER
BASIN 41O
INTERLOCUTORY DECREE

CLAIMANT: Bynum Livestock

OBJECTOR: Vicki L. Baker

CASE 41O-0006-I-2026
41O 30127458

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. The record owner of stock claim 41O 30127458 is Bynum Livestock (Claimant).

2. Claim 41O 30127458 was decreed with a Montana Department of Natural Resources and Conservation (“DNRC”) issue remark:

- THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41O DECREE ISSUED 12/29/2005.

The remark provided notice that claim 41O 30127458 was not included in the previous decree in the basin.

3. Claim 41O 30127458 was claimed with an April 10, 1962 priority date and decreed with a June 28, 2019 priority date. The following priority date information remarks were decreed on claim 41O 30127458:

- THE PRIORITY DATE OF THIS WATER RIGHT HAS BEEN CHANGED TO THE FILING DATE OF THE STATEMENT OF CLAIM. THE PRIORITY DATE MAY BE CONTESTED BY PROPER OBJECTION.
- THIS IS AN EXISTING RIGHT. ITS POST-1973 PRIORITY DATE IS DECREED PURSUANT TO SECTION 85-2-306(4) MCA.

4. Claim 41O 30127458 was claimed and decreed with a 5.00 gallon per minute (gpm) flow rate.

5. Neither a Notice of Appropriation nor a Notice of Completion was filed with the Statement of Claim for claim 41O 30127458. Instead, the Claimant attached the Affidavit of Earl Perkins to the Statement of Claim to substantiate the priority date:

AFFIDAVIT

I, Earl Perkins, previously owned the property on Section 30, T26N, R5W. We had a well drilled sometime in 1961 in the corral on the east side of the sheep shed. That well has been in operation since that time and is currently being used by Bynum Livestock, LLC.

6. On May 19, 2025, Vicki L. Baker objected to claim 41O 30127458, stating:

Priority Date should be early 1960 according to Earl Perkins. WR# 41O 30125221 (7/20/1961) was put to use after 41O 30127458. Asking for 1/1/1960 PD. The flow rate should be 10 gpm which was acceptable for the date.

7. An Order was issued setting a deadline for Objector Vicki Baker to support her Objection to claim 41O 30127458. (Doc.¹ 1.00). The Order set a deadline for Objector Vicki Baker to file documentation supporting the requested January 1, 1960 priority date for claim 41O 30127458 and for the Objector to file documentation supporting a 10.00 gpm historical flow rate for claim 41O 30127458. The Order indicated

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

that if nothing were filed by the deadline, it would be determined that Vicki Baker agrees the priority date for claim 41O 30127458 should be modified to December 31, 1961 and the flow rate for claim 41O 30127458 should be 5.00 gpm.

8. On September 3, 2026, Vicki Baker filed a Response to the Order Setting Filing Deadline. (Doc. 2.00).

Ms. Baker indicated that she agrees with the December 31, 1961 priority date decreed on claim 41O 30127458.

Ms. Baker filed evidence concerning the flow rate for claim 41O 30127458. Ms. Baker explained that when she completed the Statement of Claim for 41O 30127458, she inadvertently omitted the sheep, which were the foundation of Bynum Livestock beginning in the late 1930s. Ms. Baker attached a copy of a 1969 wool contract showing 1,100 ewes. Ms. Baker indicated that the ewes were in addition to 900 cattle. The well described by claim 41O 30127458 was the sole water source for lambing and calving within the corral system. Ms. Baker described water use within the corral system:

Lambing was mainly conducted in the barn. When the sheep were sheared, they were kept in the lot for protection from predators and weather and drank from the trough in the corral. As the ewes lambled, they were brought to the shed and put in jugs. Each jug held one ewe and her lamb or lambs. While in the barn, the sheep were watered and fed grain first thing in the morning and again in the late afternoon. The individual jugs, numbering approximately 80 to 100, each received a 2.5-gallon galvanized pail of water twice daily. For purposes of this

explanation, I refer to a ewe with her lamb or lambs as one unit. Ten pens, each holding 10 units, had two or three 15-gallon galvanized tubs that were refilled three times each day. The units were then moved to six 25-pen areas, each containing four to six 15-gallon tubs that were also refilled three times daily. After the 25-pen stage, the sheep were moved to outside pens (out pens), where they drank directly from the source on Muddy Creek.

Taken together, this operation required a substantial daily volume of water. The individual jugs alone required 400 to 500 gallons per day (80 to 100 jugs, each receiving a 2.5-gallon pail twice daily). The ten-pen stage required approximately 900 to 1,350 gallons per day (ten pens, two to three 15-gallon tubs each, refilled three times daily), and the six 25-pen areas required approximately 1,080 to 1,620 gallons per day (four to six 15-gallon tubs each, refilled three times daily). The cow-calf pairs sheltered in the corral during severe weather—up to 100 pairs—required an additional 1,500 to 2,000 gallons per day, using the standard livestock water-use figure of 15 to 20 gallons per pair per day. In total, this operation required approximately 3,900 to 5,500 gallons of water per day, or roughly 4,700 gallons per day on average.

This was a working ranch well, not a continuous-draw system. Water was drawn intensively during the two daily chore periods—morning and late afternoon—when the jugs, tubs, and stock tank were filled and refilled to keep pace with the animals moving through the corral. To meet this demand within the hours actually worked each day, rather than spread evenly across 24 hours, the well needed to sustain a flow rate of approximately 10 gallons per minute. This is the flow rate I am asking the Court to recognize as historically necessary to sustain the calving and lambing operation described above.

PRINCIPLES OF LAW

1. The Water Court must address all issue remarks decreed on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. §§ 85-2-227, -231(2), MCA.

3. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Mont. Code Ann. § 85-2-227 (2025); Rule 10, W.R.Adj.R.

4. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

5. Rule 13(f)(iii), W.R.C.E.R, indicates that if a general year is claimed, the date at the end of the period will be used as the priority date.

CONCLUSIONS OF LAW

1. The flow rate information in the record overcomes the prima facie status of claim 41O 30127458 and it is appropriate to modify the flow rate.

2. The Earl Perkins Affidavit indicates the well described by claim 41O 30127458 was drilled in 1961.

3. The issue remark decreed on claim 41O 30127458 provided notice that the claim was filed as an “exempt” claim under the provisions of House Bill 110 (“HB 110”) passed by the 2017 Montana Legislature (codified at § 85-2-222, MCA). HB 110 provided owners of certain exempt claims the option of filing the claims before a June 30, 2019 filing deadline.

The DNRC examined exempt claims under its claim examination rules. Based on the DNRC examination, the issue remark was placed on the claim, providing notice that the claim did not appear in the temporary preliminary decree (“TPD”) for Basin 41O, issued in 2005, because the TPD predated the exempt claim filing deadline.

The only objection to claim 41O 30127458 has been addressed. Absent other objections, the issue remark does not raise factual or legal issues that need to be addressed. No further proceedings are required to resolve the remark.

RECOMMENDATIONS

1. The flow rate for claim 41O 30127458 should be modified from 5.00 gpm to 10.00 gpm.
 2. The priority date for claim 41O 30127458 should be modified from June 28, 2019 to December 31, 1961.
 3. The issue remark should be removed from the claim abstract.
 4. The Objection should be dismissed as it has been addressed.
- An is enclosed.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Bynum Livestock
PO Box 400
Stanford, MT 59479

Vicki L. Baker
51 Perkins Rd
PO Box 809
Bynum, MT 59419

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
TETON RIVER
BASIN 41O**

Water Right Number: 41O 30127458 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: BYNUM LIVESTOCK
PO BOX 400
STANFORD, MT 59479

***Priority Date:** DECEMBER 31, 1961

***Type of Historical Right:** FILED

Purpose (Use): STOCK

Flow Rate: 10.00 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		NESENW	30	26N	5W	TETON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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			NESENW	30	26N	5W	TETON