

Montana Water Court  
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**FILED**  
08/06/2025  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
43O-0009-I-2025  
Lambert, Kathryn  
5.00

MONTANA WATER COURT  
YELLOWSTONE DIVISION  
LITTLE BIGHORN RIVER  
BASIN 43O  
INTERLOCUTORY DECREE

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CLAIMANT: David Pitsch

OBJECTORS: Sunlight Ranch Co.; United States, DOI Bureau  
of Indian Affairs

**CASE 43O-0009-I-2025**  
43O 187808-00

**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 may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail 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**

Sunlight Ranch Co. and the United States, DOI Bureau of Indian Affairs each objected to David Pitsch claim 43O 187808-00. This claim appeared in the Interlocutory Decree with multiple issue remarks and notice remarks. On June 23, 2025 the parties filed a Stipulation

resolving the objections and issue remarks. The Stipulation is viewable in the Court's FullCourt Enterprise case management system.

#### APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

#### FINDINGS OF FACT

1. The Interlocutory Decree states that the priority date for this stock well is MAY 7, 1868 and the type of historical right is RESERVED. The Interlocutory Decree includes the following related issue remarks:

NO REVIEW OR DETERMINATION OF THE CLAIMED TYPE OF HISTORICAL RIGHT HAS BEEN MADE. ADDITIONAL EVIDENCE MAY BE REQUIRED BEFORE THIS CLAIM CAN BE DECREED.

THE PRIORITY DATE MAY BE QUESTIONABLE. ACCORDING TO INFORMATION IN THE CLAIM FILE, IT APPEARS WATER FROM THE SOURCE WAS FIRST USED IN 1950.

AT THE TIME OF THE CLAIMED PRIORITY DATE, IT APPEARS THAT THE PLACE OF USE WAS PART OF AN INDIAN RESERVATION.

The Stipulation states that the property on which the well is located was formerly allotted to members of the Crow Tribe and left trust status between 1907 and 1912; however, the well was not drilled until 1950 and therefore not entitled to qualification as a *Walton* right. The priority date should be DECEMBER 31, 1950 and the type of historical right should be USE. The issue remarks should be removed as addressed and resolved.

2. The Interlocutory Decree also includes the following notice remark:

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 8/8/2013 , THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY DONALD L PITSCH (1/3 INTEREST) OF PO BOX 185, CROW AGENCY, MT 59022.

The Stipulation requests the addition of Donald Pitsch and Karla Berry as co-owners of this right. This requested ownership update should be pursued with Billings Regional Office,

Montana Department of Natural Resources and Conservation. The remark concerning ownership should be removed as having served its notice purpose.

3. The Interlocutory Decree also includes the following notice remark:

CLAIM WAS IMPROPERLY DESIGNATED TO BASIN 43P . CLAIM WAS NOT INCLUDED IN THE BASIN 43O PRELIMINARY DECREE ISSUED 03/25/2010.

This remark should be removed as having served its notice purpose.

#### CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the prima facie claim and to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

#### **ELECTRONICALLY SIGNED AND DATED BELOW**

##### Service via USPS Mail:

David Pitsch  
P.O. Box 45  
Garryowen, MT 59031

##### Service Via Electronic Mail:

David W Harder  
US DOJ-ENRD-TRS  
David.Harder@usdoj.gov  
Efile\_Denver.enrd@usdoj.gov

Laurence R. Martin  
Martin Smith  
Felt Martin Frazier & Weldon PC  
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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
LITTLE BIGHORN RIVER  
BASIN 43O**

**Water Right Number:** 43O 187808-00 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** DAVID PITSCH  
PO BOX 45  
GARRYOWEN, MT 59031

**Priority Date:** DECEMBER 31, 1950

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 30.00 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	2	SWSWNW	31	2S	35E	BIG HORN

**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		2	SWSWNW	31	2S	35E	BIG HORN

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**Remarks:**

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE CROW INDIAN RESERVATION.