

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MILK RIVER BELOW WHITEWATER CREEK INCLUDING PORCUPINE CREEK
(BASIN 400)
INTERLOCUTORY DECREE

CLAIMANT: Larry W. Pankratz

CASE 400-0093-I-2024
400 30134235

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

Larry W. Pankratz claim 400 30134235 appeared in the Interlocutory Decree with the following issue remark:

THE CLAIMED FLOW RATE APPEARS TO BE HIGH FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

The issue remark was not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence. At the January 23, 2025 Scheduling Conference, Larry W. Pankratz “confirmed the pump capacity is about 45.00 GPM, so the flow rate is correct.” Court Minutes, January 23, 2025. The Court Minutes 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 flow rate is 45.00 GPM. It should not be changed. The flow rate issue remark should be removed as addressed and resolved.

2. The Interlocutory Decree states that the maximum acres irrigated is 0.50 but this quantification is missing in the place of use description. The place of use description should be completed by adding 0.50 acres.

3. The Interlocutory Decree includes the following notice remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 400 DECREE ISSUED 05/24/1995. This remark provides notice that the claim was not included in the Preliminary Decree. The remark does not raise an unresolved issue which needs to be addressed. There are no proceedings required for this remark. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The information provided by the claimant is sufficient to resolve the issue remark 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 Interlocutory 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:

Larry W. Pankratz
PO Box 137
Opheim, MT 59250

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MILK RIVER, BELOW WHITEWATER INCLUDING PORCUPINE CREEK
BASIN 400**

Water Right Number: 400 30134235 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: LARRY W PANKRATZ
PO BOX 137
OPHEIM, MT 59250-0137

Priority Date: DECEMBER 31, 1917

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

***Flow Rate:** 45.00 GPM

Volume: 1.50 AC-FT

Households: 1

Maximum Acres: 0.50

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		SESESE	22	36N	40E	VALLEY

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

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	0.50		SESESE	22	36N	40E	VALLEY

Total: 0.50