

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
LITTLE BIGHORN RIVER - BASIN 43O  
INTERLOCUTORY DECREE

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CLAIMANT: Kara J. Miklovich

OBJECTOR: USA (Dept. of Interior Bureau of Indian Affairs)

**CASE 43O-0021-I-2024**

43O 30145631

43O 30145633

43O 30145638

**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, conclusions 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 be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. 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

Claims 43O 30145631, 43O 30145633, and 43O 30145638 appeared in the Interlocutory Decree for the Little Bighorn River (Basin 43O). Each claim received a Montana Department of Natural Resources and Conservation (“DNRC”) issue remark and objection from the United States on behalf of the Department of Interior Bureau of Indian Affairs (“United States”) to the priority date, but did not receive counterobjections or notices of intent to appear. Kara J. Miklovich owns the claims. To address the issue remarks and objections, the Water Court consolidated the claims into Water Court Case 43O-0021-I-2024. (Doc.<sup>1</sup> 1.00.)

### FINDINGS OF FACT

1. Claims 43O 30145631, 43O 30145633, and 43O 30145638 are stockwater claims with a priority date of May 7, 1868, which is the date of the Treaty of Fort Laramie, and the historical type of right as “use.”
2. Claimant attached documents to the statement of claim for each water right indicating that they are *Walton* rights.
3. The DNRC therefore added the following informational remark to the claims:

THIS WATER RIGHT IS A WALTON RIGHT.
4. The United States objected to the claims, asserting that as *Walton* rights, the historical type of right of the claims should be “reserved” and the following informational remark should be added to the claims:

THIS WATER RIGHT IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE CROW COMPACT.
5. The Court set a deadline of December 6, 2024, for the Claimant to show cause why the historical type of right should not be “reserved,” and the informational remark should be added to the claims. The Court stated that “if nothing is filed by the

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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.

deadline, the Court will presume Claimant agrees with the United States proposed resolution to its objections and will modify the claims accordingly.” (Doc. 2.00).

6. Nothing was filed by the deadline.

7. The Court presumes Claimant agrees with the United States’ objections.

8. The remaining issue remarks placed on the claims are notice-type issue remarks. In the Order Consolidating Case and Setting Status Conference, the Court stated the notice-type issue remarks placed on the claims would be removed at the close of these proceedings. (Doc. 1.00).

### CONCLUSIONS OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298.

2. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 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. Rule 19, W.R.Adj.R.

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. A *Walton* right is a reserved water right of a Tribal allottee that has been transferred to non-Indian purchaser. *Colville Confederated Tribes v. Walton*, 647 F.2d 42 (9th Cir. 1981) (“*Walton I*”); *Colville Confederated Tribes v. Walton*, 752 F.2d 397 (9th Cir. 1985) (“*Walton II*”).

5. The evidence filed with the statement of claims for each claim indicates they are *Walton* rights. As *Walton* rights, the accurate historical type of right is “reserved”

and the following informational remark more accurately describes their status as non-tribal water rights:

THE WATER RIGHT IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE CROW COMPACT.

6. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. If a claimant fails to comply with an Order issued by the Court in its review of issue remarks, the Court may amend the claim to conform with information found in the claim file and information before the Court. Section 85-2-248(9)(a), (b), MCA.

7. Claimants did not respond to the Court's deadlines. The Court presumes Claimants agree the historical type of right should be "reserved" and the informational remarks should be added to the claims.

8. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. 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. § 85-2-248(3), MCA.

9. The notice-type issue remarks have served their purpose identifying that the claims did not appear in the previous Basin 43O decree and should be removed.

#### RECOMMENDATIONS

Based upon the Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above.

Post Decree Abstracts of Water Right Claim for claims 43O 30145631, 43O 30145633, and 43O 30145638 are served with this Master's Report to confirm the recommendations have been made in the DNRC's water right database.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Kara J. Miklovich  
PO Box 266  
Lodge Grass, MT 80202

**Service Via Electronic Mail:**

David W Harder  
US DOJ-ENRD-IRS  
999 18<sup>TH</sup> St South, Terrace Suite 370  
Denver, CO 80202  
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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
LITTLE BIGHORN RIVER  
BASIN 430**

**Water Right Number:** 43O 30145631 RESERVED CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** KARA J MIKLOVICH  
PO BOX 266  
LODGE GRASS, MT 59050

**Priority Date:** MAY 7, 1868

**Type of Historical Right:** RESERVED

THIS WATER RIGHT IS A WALTON RIGHT.

THIS WATER RIGHT IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE CROW COMPACT.

**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:** COOK STOVE CANYON

**Source Type:** SURFACE WATER

**\*Source Name:** UNNAMED TRIBUTARY OF COOK STOVE CANYON

**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         |                 | SENE           | 32         | 6S         | 37E        | BIG HORN      |

**\*Source Name:** COOK STOVE CANYON

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

|   |  |      |    |    |     |          |
|---|--|------|----|----|-----|----------|
| 2 |  | E2SE | 32 | 6S | 37E | BIG HORN |
|---|--|------|----|----|-----|----------|

**\*Source Name:** UNNAMED TRIBUTARY OF COOK STOVE CANYON

**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         |              |                 | SENE           | 32         | 6S         | 37E        | BIG HORN      |
| 2         |              |                 | E2SE           | 32         | 6S         | 37E        | BIG HORN      |

**Remarks:**

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

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
LITTLE BIGHORN RIVER  
BASIN 43O**

**Water Right Number:** 43O 30145633 RESERVED CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** KARA J MIKLOVICH  
PO BOX 266  
LODGE GRASS, MT 59050

**Priority Date:** MAY 7, 1868

**Type of Historical Right:** RESERVED

THIS WATER RIGHT IS A WALTON RIGHT.

THIS WATER RIGHT IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE CROW COMPACT.

**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:** SHAVINGS CREEK

**Source Type:** SURFACE WATER

**Source Name:** UNNAMED TRIBUTARY OF SHAVINGS 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         |                 | E2             | 21         | 5S         | 36E        | BIG HORN      |

**Source Name:** SHAVINGS CREEK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

|   |  |    |    |    |     |          |
|---|--|----|----|----|-----|----------|
| 2 |  | E2 | 21 | 5S | 36E | BIG HORN |
|---|--|----|----|----|-----|----------|

**Source Name:** UNNAMED TRIBUTARY OF SHAVINGS CREEK

**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         |              |                 | E2             | 21         | 5S         | 36E        | BIG HORN      |
| 2         |              |                 | E2             | 21         | 5S         | 36E        | BIG HORN      |



**Remarks:**

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

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
LITTLE BIGHORN RIVER  
BASIN 43O**

**Water Right Number:** 43O 30145638 RESERVED CLAIM  
**Version:** 2 -- POST DECREE  
**Status:** ACTIVE

**Owners:** KARA J MIKLOVICH  
PO BOX 266  
LODGE GRASS, MT 59050

**Priority Date:** MAY 7, 1868

**Type of Historical Right:** RESERVED  
THIS WATER RIGHT IS A WALTON RIGHT.  
THIS WATER RIGHT IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE CROW COMPACT.

**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:** UNNAMED TRIBUTARY OF RENO CREEK, SOUTH FORK

**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         |                 | NE             | 36         | 5S         | 36E        | BIG HORN      |

**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         |              |                 | NE             | 36         | 5S         | 36E        | BIG HORN      |

**Remarks:**

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