

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

* * * * *

CLAIMANTS: Teri McMichael; Wayne McMichael

OBJECTOR: Wayne McMichael

CASE 400-0092-I-2024
400 30139250

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

Wayne McMichael and the United States of America (Bureau of Indian Affairs) each objected to Teri McMichael and Wayne McMichael claim 400 30139250. The Assiniboine &

Sioux Tribes of Fort Peck filed a notice of intent to appear. This claim appeared in the Interlocutory Decree with an issue remark. The McMichaels filed additional information on February 28, 2025, March 28, 2025, and May 27, 2025. On April 15, 2025 the Bureau of Indian Affairs' Withdrawal Of Objection was filed which includes the Assiniboine & Sioux Tribes of Fort Peck withdrawal of its notice of intent to appear. These filings are 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. Teri McMichael and Wayne McMichael stockwater well claim 400 30139250 appeared in the Interlocutory Decree with the following remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 400 DECREE ISSUED 05/24/1995.

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

2. The first remark provides notice that the claim was not included in the Preliminary Decree. The remark should be removed as having served its notice purpose.

3. The Interlocutory Decree states the priority date is DECEMBER 31, 1947 and the type of historical right is USE. The McMichaels filed copies of the Declaration of Vested Groundwater Rights for the well, including the filing data. The priority date does not require change. The type of historical right should be FILED. The issue remark concerning type of historical right and priority date should be removed as addressed and resolved.

CONCLUSION OF LAW

The information filed by the claimants is sufficient to contradict and overcome the prima facie claim and 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 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 Electronic Mail:

Teri McMichael
Wayne McMichael
doghouse1235@gmail.com

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

Water Right Number: 400 30139250 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: TERI MCMICHAEL
PO BOX 124
NASHUA, MT 59248-0124

WAYNE MCMICHAEL
PO BOX 124
NASHUA, MT 59248-0124

***Priority Date:** DECEMBER 31, 1947

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 25.00 GPM

Volume: 7.90 AC-FT

Households: 1

Maximum Acres: 3.00

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	3	NESESW	35	28N	41E	VALLEY

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: WELL

***Period of Use:** APRIL 1 TO OCTOBER 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		3	NESESW	35	28N	41E	VALLEY

Remarks:

POINT OF DIVERSION AND PLACE OF USE ARE LOCATED IN COS# 344.