

Montana Water Court
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MONTANA WATER COURT
LOWER MISSOURI DIVISION
JUDITH RIVER
BASIN 41S
PRELIMINARY DECREE

CLAIMANT: Anton Tony Stein Trust Agreement

OBJECTOR: Lori K. Peterson

CASE 41S-2132-R-2025
41S 113096-00

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 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 domestic claim 41S 113096-00 is the Anton Tony Stein Trust Agreement (the Trust).
2. Claim 41S 113096-00 was decreed with Montana Department of Natural Resources and Conservation ("DNRC") issue remarks:
 - AN AMENDMENT WAS SUBMITTED ON 03/18/2022 REQUESTING TO AMEND THE PLACE OF USE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED BY THE COURT AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.
 - AN AMENDMENT WAS SUBMITTED ON 03/17/2022 REQUESTING TO AMEND THE PRIORITY DATE, FLOW RATE TO 2 GPM, POINT OF DIVERSION, PERIOD OF DIVERSION, PERIOD OF USE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.
 - THE FLOW RATE APPEARS INCORRECT. THE STATEMENT OF CLAIM FORM INDICATES 2 GPM WAS CLAIMED. DOCUMENTATION SUBMITTED WITH THIS CLAIM ALSO INDICATES A FLOW RATE OF 2 GPM.
 - ON 03/27/2006 THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FILED A MEMORANDUM STATING THAT IT APPEARS THE PRIORITY DATE SHOULD BE 07/23/1971. THIS WILL BE ADDRESSED AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.
3. Hugo F. Schroeckenstein and Ellen F. Schroeckenstein filed Domestic claim 41S 113096-00 on December 1, 1981. Claim 41S 113096-00 was filed for a 2.00 gallon per minute (2.00 gpm) pump diverted and used in the SWSWSE of Section 36, Township 13 North, Range 11 East, Judith Basin County with a July 23, 1971 priority date; the claimed period of use was June 1 to October 1.

During examination of the claim, the DNRC filed a Memorandum regarding the priority date of claim 41S 113096-00, the Memorandum stated in part:

I recently discovered a database error with the above-referenced claim. According to the Statement of Claim, the priority date was listed by the claimant as 8/18/1971, which coincides with the date of recording the GW form with the county. During examination, this office corrected the date to 7/23/1971, coinciding with the completion date of the well (see GW form). However, the database reflects a date of 8/18/1917.

It appears the priority date should be listed as 7/23/1971. Thank you.

The priority date issue remark was added to claim 41S 113096-00 claim to provide notice of the possible priority date modification during adjudication of the Preliminary Decree.

4. At some point the flow rate for claim 41S 113096-00 was modified from 2.00 gpm to 3.00 gpm without apparent reason. The flow rate issue remark was added to claim 41S 113096-00 to provide notice of the possible flow rate modification during adjudication of the Preliminary Decree.

5. In 2022, Lori K. Peterson filed Amendments to Statement of Claim 41S 113096-00 indicating the following modifications should be made:

3. Point of Diversion: County - JUDITH BASIN ☐ See attachment
____ Lot ____ Block S 1/2 1/4 SW 1/4 SE 1/4 Section 36 T 13N R 11E
____ Lot ____ Block ____ 1/4 ____ 1/4 ____ 1/4 Section ____ T ____ R ____
____ Lot ____ Block ____ 1/4 ____ 1/4 ____ 1/4 Section ____ T ____ R ____
Subdivision _____

4. Period of Diversion: YEAR ROUND
(Month/Day TO Month/Day)

7. Place of Use: County - JUDITH BASIN ☐ See attachment
____ acres ____ Lot ____ Block ____ 1/4 S 1/2 1/4 SE 1/4 Section 36 T 13N R 11E
____ acres ____ Lot ____ Block ____ 1/4 ____ 1/4 ____ 1/4 Section ____ T ____ R ____
____ acres ____ Lot ____ Block ____ 1/4 ____ 1/4 ____ 1/4 Section ____ T ____ R ____
____ acres ____ Lot ____ Block ____ 1/4 ____ 1/4 ____ 1/4 Section ____ T ____ R ____
Total Acres Subdivision _____

10. Period(s) of Use: YEAR ROUND
(Month/Day TO Month/Day)

11. Priority Date: (date of first use) JULY 23, 1971
(Month/Day/Year)

13. Reasons for Amendment: FLOW RATE IS INCORRECT @ 3 GPM
SHOULD BE 2 GPM

Some of the modifications proposed by Lori K. Peterson, like priority date and flow rate addressed DNRC issue remarks and do not require evidence. However, some of the modifications proposed by Lori K. Peterson, like the point of diversion and place of use expansions, and the period of use and period of diversion expansions, required additional evidence to substantiate historical beneficial use.

An Order Setting Filing Deadline was issued on October 27, 2025 (Doc.¹1.00). The Order set deadlines for Lori K. Peterson to provide evidence substantiating the proposed modifications to point of diversion and place of use, and the period of use and period of diversion of claim 41S 113096-00, and to determine if the Trust agrees with the priority date and flow rate modification as identified in the issue remarks.

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system. The "Doc." references in this Report will refer to Case 43A-0011-R-2020, unless otherwise noted.

6. On November 4, 2025, Lori K. Peterson telephoned Water Master Anika M. Stern and indicated she represents the Trust and she confirmed that she agrees the priority date for claim 41S 113095-00 should be July 23, 1971 and the flow rate should be 2.00 gallons per minute. Ms. Peterson also indicated she does not intend to pursue the motions to amend or Objection. On November 4, 2025, Ms. Peterson filed the following:

Case # 41S-2132-R-2025 This is Lori K. Peterson Representative for the Anton Tony Stein Trust
Montana Water Court
regarding the period of use can remain the same as documented all other changes can be made
for correction thank you Lori K. Peterson

(Doc. 2.00).

PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

2. 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.

3. 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.

4. 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.

CONCLUSIONS OF LAW

1. The prima facie Statement of Claim has been overcome for claim 41S 113096-00 as to the priority date for claim 41S 113096-00 and the priority date should be July 23, 1971.

2. The flow rate for claim 41S 113096-00 should be corrected back to the 2.00 gallons per minute claimed.

RECOMMENDATIONS

1. The priority date for claim 41S 113096-00 should be modified to July 23, 1971.
 2. The flow rate for claim 41S 113096-00 should be modified to 2.00 gallons per minute.
 3. The period of diversion and period of use Objection and point of diversion and place of use amendments to claim 41S 113096-00 should be dismissed as Lori K. Peterson has indicated she does not intend to pursue them.
 4. The issue remarks should be removed from the claim abstract.
- An abstract is enclosed.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

Lori K. Peterson
Anton Tony Stein Trust Agreement
140 Heath Park Ln.
Lewistown, MT 59457

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S

Water Right Number: 41S 113096-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: STEIN, ANTON TONY TRUST AGREEMENT
140 HEATH PARK LN
LEWISTOWN, MT 59457

Priority Date: JULY 23, 1971

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 2.00 GPM

Volume: 1.50 AC-FT

Households: 1

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		SWSWSE	36	13N	11E	JUDITH BASIN

Period of Diversion: JUNE 1 TO OCTOBER 1

Diversion Means: WELL

Period of Use: JUNE 1 TO OCTOBER 1

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			SWSWSE	36	13N	11E	JUDITH BASIN