

Montana Water Court
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MONTANA WATER COURT
LOWER MISSOURI DIVISION
MILK RIVER, BELOW WHITEWATER CREEK INCLUDING PORCUPINE CREEK
BASIN 400
INTERLOCUTORY DECREE

CLAIMANT: Judith Louise Johnston Revocable Trust

OBJECTOR: United States, DOI Bureau of Indian Affairs

COUNTEROBJECTOR: Judith L. Johnston

NOTICE OF INTENT TO APPEAR: Assiniboine & Sioux Tribes of
Fort Peck

CASE 400-0088-I-2024
400 30133902

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

The United States of America, DOI Bureau of Indian Affairs objected to this claim. The Assiniboine & Sioux Tribes of Fort Peck filed a notice of intent to appear. This claim appeared in the Interlocutory Decree with the following issue remarks:

NO MEANS OF DIVERSION WAS CLAIMED.

NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.

NO PERIOD OF DIVERSION WAS CLAIMED.

NO PERIOD OF USE WAS CLAIMED.

THE CLAIMED PLACE OF USE COULD NOT BE IDENTIFIED FROM DATA SUBMITTED WITH THE CLAIM.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE UNDEVELOPED SPRING CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

THE PURPOSE OF THIS CLAIM IS UNCLEAR AS MULTIPLE PURPOSES HAVE BEEN CLAIMED. THE CLAIMED PURPOSES INCLUDE DOMESTIC AND STOCK . MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

NO VOLUME HAS BEEN CLAIMED.

On September 19, 2025 the parties filed a Stipulation For The Resolution Of Objections. On February 17, 2026 the Bureau Of Indian Affairs' Status Report was filed including a proposed abstract. The Stipulation and Status Report 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. The Interlocutory Decree states that the priority date is December 31, 1920. The

priority date should be MAY 29, 1953.

2. The Interlocutory Decree states that the purpose is DOMESTIC. The purpose should be STOCK. The purpose issue remark should be removed as addressed and resolved.

3. The Interlocutory Decree does not include a flow rate. The standard livestock direct from source flow rate remark should be added:

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.

The flow rate issue remark should be removed as addressed and resolved.

4. The Interlocutory Decree does not include a volume. The standard livestock volume remark should be added:

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.

The volume issue remark should be removed as addressed and resolved.

5. The Interlocutory Decree does not include a period of diversion or a period of use. Both should be JANUARY 1 TO DECEMBER 31. The period of diversion and period of use issue remarks should be removed as addressed and resolved.

6. The Interlocutory Decree states that the means of diversion is UNKNOWN. The means of diversion should be LIVESTOCK DIRECT FROM SOURCE. The means of diversion issue remark should be removed as addressed and resolved.

7. The Interlocutory Decree states that the point of diversion and place of use are both the W2 section 8, T31N, R41E, VALLEY, and the source is SPRING, UNNAMED TRIBUTARY OF PORCUPINE CREEK. The DNRC Examination Worksheet ["Worksheet"] states that this legal description was found in the copy of the property tax appraisal notice attached to the Statement of Claim. The Worksheet comment concerning the source states: "The streams located in the W2 Sec. 8 T31N R41E are all unnamed tributaries of Porcupine Creek." The Stipulation and the abstract attached to the Status Report do not include any changes to the place of use and point of diversion legal description, or to the source. It appears they are correct as they appeared in the Interlocutory Decree. The point of diversion and place of use

issue remarks should be removed as addressed and resolved.

8. This claim appeared in the Interlocutory Decree for this Basin with the following remark:

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

The 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. Section 85-2-248(3), (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:

Judith Louise Johnston Revocable Trust
Judith L. Johnston
1248 Avenida de Las Casas
Lady Lake, FL 32159

Service Via Electronic Mail:

William Crum
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(*atty for: United States, DOI Bureau of Indian Affairs*)

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

Water Right Number: 400 30133902 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: JOHNSTON, JUDITH LOUISE REVOCABLE TRUST
1248 AVENIDA DE LAS CASAS
LADY LAKE, FL 32159

Priority Date: MAY 29, 1953

Type of Historical Right: USE

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:** SPRING, UNNAMED TRIBUTARY OF PORCUPINE 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		W2	8	31N	41E	VALLEY

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			W2	8	31N	41E	VALLEY

Remarks:

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