

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

\*\*\*\*\*

CLAIMANTS: Joe Philippi; Susan Philippi

OBJECTOR: United States, DOI Bureau of Indian Affairs

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

**CASE 400-0110-I-2024**

400 30134358

400 30134360

**400 30174186**

**400 30174187**

**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, DOI Bureau of Indian Affairs objected to each of these claims. The Assiniboine & Sioux Tribes of Fort Peck filed a notice of intent to appear for each claim. Claim 400 30134358 appeared in the Interlocutory Decree with the following issue remark:

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 03/24/2023 , A PORTION

OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY USA IN TRUST FOR THE ASSINIBOINE & SIOUX TRIBES, PO BOX 1027, POPLAR, MT 59255-1027.

Claim 400 30134360 appeared in the Interlocutory Decree with the following issue remark:

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 03/23/2023 , THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY JOSEPH E PHILIPPI, PO BOX 175, JUDITH GAP, MT 59453-0175.

As Joe Philippi was listed as an owner in the Interlocutory Decree, the remark on 400 30134360 is moot.

On August 12, 2024, the Philipphis filed a response to the objections. The response is viewable in the scanned copy of the claim file on the DNRC Water Right Query System at <http://wrqs.dnrc.mt.gov>. On February 20, 2026, the parties filed a Stipulation For The Resolution Of Objections. The Stipulation 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.

"'Implied Claim' means a claim authorized by the water court to be separated and individually identified when a statement of claim includes multiple rights." Rule 2(a)(33), W.R.C.E.R.

From 41P-108 "Circle S Ranch, Inc." Order On Motion To Modify Claims 5-16-19, at 2019 Mont. Water LEXIS 8, page 5:

The Water Court recognizes implied claims in certain circumstances *In re Musselshell River below Roundup*, Case 40C-47, 1994 Mont. Water LEXIS 18, \*78 (July 14, 1994). However, before the Court will recognize an implied claim, the claimant must prove that several factors exist. These include: (1) proof of two or more water rights in the original claim form or the material submitted with the claim form; (2) proof of historic use corroborating the implied claim; and (3) proof that recognizing the implied claim(s) will avoid causing a change to historic water use or increase the historic burden to other water users. *In re Foss*, Case 76HF-580, 2013 Mont. Water LEXIS 17, \*32 (Jan. 31, 2013); *In re Martinell*, Case 41A-148, 2018 Mont. Water LEXIS 3, \*6 (June 14, 2018). These standards assure that implied claims are not used to revive a claim that was forfeited as a matter of law by missing the filing deadline. Mont. Code Ann. § 85-2-226 (establishing conclusive presumption of abandonment of for claims not timely filed); *In re Climbing Arrow Ranch*, Case 41F-A19, 2019 Mont. Water LEXIS 1 (Mar. 6, 2019). The implied claim process also cannot be used to expand the elements of a statement of claim. *In re Eliasson Ranch Company*, Order Amending and Adopting Master's Report, Case 40A-115, 2004 Mont. Water LEXIS 2, \*6 (Jun. 28,

2004) (“Eliasson”).

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. For claim 400 30134358, the Interlocutory Decree states that the priority date is JANUARY 1, 1895. The priority date should be JULY 9, 1965.

The Interlocutory Decree identifies two sources: THE PASS and UNNAMED TRIBUTARY OF THE PASS. The changes to point of diversion eliminate the diversion on the UNNAMED TRIBUTARY OF THE PASS, and it should be removed as a source.

The Interlocutory Decree states that the point of diversion and place of use are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
E2SWSE	12	31N	41E	VALLEY
SESWSE	12	31N	41E	VALLEY
NE	13	31N	41E	VALLEY
NENESE	13	31N	41E	VALLEY

The point of diversion and place of use should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NE	13	31N	41E	VALLEY
NENESE	13	31N	41E	VALLEY

The ownership remark should be removed as addressed and resolved.

2. For claim 400 30134360, a review of the Statement of Claim, Philippis’ response, and the Stipulation show that it contains three appropriations with different priority dates.

3. Claim 400 30134360 should be used for the March 1, 1954 right. Implied claim 400 30174186 should be used for the July 9, 1965 right. Implied claim 400 30174187 should be used for the January 28, 1966 right.

4. For claim 400 30134360, the Interlocutory Decree states that the priority date is JANUARY 1, 1895. The priority date should be MARCH 1, 1954.

The Interlocutory Decree states that the point of diversion and place of use are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SE	13	31N	41E	VALLEY
N2NESW	8	31N	42E	VALLEY
S2S2NW	8	31N	42E	VALLEY
SESESW	7	31N	42E	VALLEY

The text of the Stipulation states that the point of diversion and place of use include two parcels in section 8. The Proposed Abstract states one parcel is in section 8 and the other in section 7. Using the text of the Stipulation, the point of diversion and place of use should each be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
N2NESW	8	31N	42E	VALLEY
S2S2NW	8	31N	42E	VALLEY

The ownership remark should be removed as moot.

5. The elements of implied claim 400 30174186 should be the same as 400 30134360, except the priority date should be JULY 9, 1965, and the point of diversion and place of use should each be the N2SE section 13, T31N, R42E, VALLEY.

6. The elements of implied claim 400 30174187 should be the same as 400 30134360, except the priority date should be JANUARY 28, 1966, and the point of diversion and place of use should each be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
S2SE	13	31N	41E	VALLEY
SESESW	7	31N	42E	VALLEY

#### CONCLUSION OF LAW

The Philippis' response and the Stipulation are sufficient to contradict and overcome prima facie claim 400 30134358. Statement of Claim 400 30134360, the Philippis' response, and the Stipulation are sufficient to generate two implied claims and to contradict and overcome the prima facie claim.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends the Court generate implied claims 400 30174186 and 400 30174187 and 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 for each 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:**

Joe Philippi  
Susan Philippi  
PO Box 175  
Judith Gap, MT 59453

**Service Via Electronic Mail:**

Ryan C. Rusche  
Sonosky, Chambers, Sachse, Enderson & Perry, LLP  
rusche@sonosky.com

Rebecca M. Ross  
U.S. Dept of Justice  
Rebecca.Ross@usdoj.gov  
IRSMontanaWater.enrd@usdoj.gov

***\*Note: Caption Updated 3/5/2026\****

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

**Water Right Number:** 400 30134358 STATEMENT OF CLAIM  
**Version:** 2 -- POST DECREE  
**Status:** ACTIVE

**Owners:** JOE PHILIPPI  
PO BOX 175  
JUDITH GAP, MT 59453-0175  
  
SUSAN PHILIPPI  
PO BOX 175  
JUDITH GAP, MT 59453-0175

**Priority Date:** JULY 9, 1965

**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:** THE PASS

**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	13	31N	41E	VALLEY

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		NENESE	13	31N	41E	VALLEY
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**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	13	31N	41E	VALLEY
2			NENESE	13	31N	41E	VALLEY

**Remarks:**

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

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

**Water Right Number:** 400 30134360 STATEMENT OF CLAIM  
**Version:** 2 -- POST DECREE  
**Status:** ACTIVE

**Owners:** JOE PHILIPPI  
PO BOX 175  
JUDITH GAP, MT 59453-0175  
  
SUSAN PHILIPPI  
PO BOX 175  
JUDITH GAP, MT 59453-0175

**Priority Date:** MARCH 1, 1954

**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:** PORCUPINE CREEK, EAST 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		N2NESW	8	31N	42E	VALLEY

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		S2S2NW	8	31N	42E	VALLEY
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**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			N2NESW	8	31N	42E	VALLEY
2			S2S2NW	8	31N	42E	VALLEY

**Remarks:**

THE IMPLIED CLAIMS LISTED FOLLOWING THIS STATEMENT WERE AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM. 400 30174186, 400 30174187.

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

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

**Water Right Number:** 400 30174186 STATEMENT OF CLAIM  
**Version:** 1 -- ORIGINAL RIGHT  
**Status:** ACTIVE

**Owners:** JOE PHILIPPI  
PO BOX 175  
JUDITH GAP, MT 59453-0175  
  
SUSAN PHILIPPI  
PO BOX 175  
JUDITH GAP, MT 59453-0175

**Priority Date:** JULY 9, 1965

**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:** PORCUPINE CREEK, EAST 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		N2SE	13	31N	42E	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			N2SE	13	31N	42E	VALLEY

**Remarks:**

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 400 30134360.

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

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 400 DECREE ISSUED 01/11/2024.

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

**Water Right Number:** 400 30174187 STATEMENT OF CLAIM  
**Version:** 1 -- ORIGINAL RIGHT  
**Status:** ACTIVE

**Owners:** JOE PHILIPPI  
PO BOX 175  
JUDITH GAP, MT 59453-0175  
  
SUSAN PHILIPPI  
PO BOX 175  
JUDITH GAP, MT 59453-0175

**Priority Date:** JANUARY 28, 1966

**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:** PORCUPINE CREEK, EAST 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		S2SE	13	31N	41E	VALLEY

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		SESESW	7	31N	42E	VALLEY
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**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			S2SE	13	31N	41E	VALLEY
2			SESESW	7	31N	42E	VALLEY

**Remarks:**

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 400 30134360.

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

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 40O DECREE ISSUED 01/11/2024.