

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
(406) 586-4364  
1-800-624-3270  
Fax: (406) 522-4131  
[watercourt@mt.gov](mailto:watercourt@mt.gov)

FILED

JUN 15 2020

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
BIGHORN RIVER, BELOW GREYBULL RIVER (43P)

\*\*\*\*\*

CLAIMANT: City of Hardin

OBJECTORS: Apsaalooke (Crow) Tribe; City of Hardin; United States of  
America (Bureau of Reclamation)

NOTICE OF INTENT TO APPEAR: United States of America (Bureau  
of Indian Affairs)

CASE 43P-226  
43P 426-00  
43P 33941-00

**NOTICE OF FILING OF MASTER'S REPORT**

You may file a written objection to the Report if you disagree with the Master's Findings of Fact, Conclusions of Law, or Recommendations.

The above stamped date indicates the date the Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires that written objections to a Master's Report must be filed within 10 days of the date of the Master's Report. Because the 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. This means your objection must be received no later than 13 days from the above stamped date.

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

### FINDINGS OF FACT

1. Claim Nos. 43P 426-00 and 43P 33941-00, owned by the City of Hardin, appeared in the Preliminary Decree for the Bighorn River, Below Greybull River (Basin 43P) with issue remarks. The Apsaalooke (Crow) Tribe, the United States Bureau of Indian Affairs ("BIA") and the City of Hardin filed Objections to Claim No. 43P 426-00 and the Crow Tribe filed an Objection to Claim No. 43P 33941-00 while the BIA filed a Notice of Intent to Appear for that claim.

2. On February 8, 2019 the above captioned claims were consolidated into Case 43P-226.

3. On February 14, 2020, a partially executed Stipulation was filed with the Court. The City of Hardin and the BIA had executed the Stipulation. The Stipulation indicated that the Claimants and the Objectors had agreed to the modification of Claim No. 43P 426-00. A copy of the Stipulation shall be placed in the claim file for Claim No. 43P 426-00.

4. On May 6, 2020, the Crow Tribe filed a countersigned signature page of the Stipulation.

5. Pursuant to the Stipulation, the parties propose the following changes to Claim No. 43P 426-00:

Flow Rate: ~~15.00 CFS~~ **3.58 CFS**

Volume: ~~783.00 AC-FT~~ **1,074.00 AC-FT**

Points of Diversion and Places of Use

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
<del>1</del>			<del>10</del>	<del>1S</del>	<del>33E</del>	<del>Big Horn</del>
<del>2</del>			<del>11</del>	<del>1S</del>	<del>33E</del>	<del>Big Horn</del>
<del>3</del>		<b><u>W2</u></b>	<del>12</del>	<del>1S</del>	<del>33E</del>	<del>Big Horn</del>
<del>4</del>			<del>13</del>	<del>1S</del>	<del>33E</del>	<del>Big Horn</del>
<del>5</del>			<del>14</del>	<del>1S</del>	<del>33E</del>	<del>Big Horn</del>
<del>6</del>			<del>15</del>	<del>1S</del>	<del>33E</del>	<del>Big Horn</del>
<del>7</del>			<del>22</del>	<del>1S</del>	<del>33E</del>	<del>Big Horn</del>
<del>8</del>			<del>23</del>	<del>1S</del>	<del>33E</del>	<del>Big Horn</del>
<del>9</del>		<b><u>W2W2</u></b>	<del>24</del>	<del>1S</del>	<del>33E</del>	<del>Big Horn</del>
<del>10</del>			<del>25</del>	<del>1S</del>	<del>33E</del>	<del>Big Horn</del>

11	<u>N2N2</u>	26	1S	33E	Big Horn
12	<u>NENE</u>	27	1S	33E	Big Horn

6. Pursuant to the Stipulation, the issue remarks should be removed from Claim Nos. 43P 426-00 and 43P 33491-00. The Priority Date and Volume remarks should be removed from Claim No. 43P 426-00.

### PRINCIPLES 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, 367 P.3d 732; §§ 85-2-233, -102(12), MCA. The purpose of the Water Court is to adjudicate rights to the use of water as they existed on July 1, 1973. *In re Clark Fork River*, 254 Mont. 11, 17, 833 P.3d 1120 (Mont. 1992).

2. A properly filed Statement of Claim for Existing Water 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 Water Court is not bound by settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court.” Rule 17(a), W.R.Adj.R.; *In re Argabright*, 2014 Mont. Water LEXIS 9, 41I 265 (December 12, 2014).

4. Where a claimant agrees to reduce or limit an element of a claim, “the water court does not need to determine whether the burden of proof has been met.” Rule 17(c), W.R.Adj.R. The Court may accept the requested reduction or limitation “without further presentation of evidence.” Rule 17(c), W.R.Adj.R.

### CONCLUSIONS OF LAW

1. The Stipulation entered into by the parties is signed by the Claimant and the BIA, conforms to applicable law and, accordingly, the record supports the resolution of the Objections and Notices of Intent to Appear filed by the BIA to the above-captioned claims. Claim Nos. 43P 426-00 and 43P 33941-00 should be modified as discussed

above and the issue remarks should be removed from the claims.

### RECOMMENDATIONS

1. Upon review of the record in this Claim Nos. 43P 426-00 and 43P 33941-00 should be modified as discussed above.

Post Decree Abstracts of Water Right Claims are attached to this Master's Report for review.

DATED this 15<sup>th</sup> day of June, 2020.



Nathan Block  
Water Master

**Service via USPS Mail:**

Jordan W. Knudsen  
Knudsen & Knudsen, PLLC  
PO Box 450  
Hardin, MT 59034  
(406) 665-1600  
jordan@knudsenknudsen.com

**Service Via Electronic Mail:**

Nathan A. Espeland, Esq.  
Espeland Law Office, PLLC  
PO Box 1470  
Columbus, MT 59019  
(406) 322-9877  
espelandnathan@gmail.com

James J. DuBois, Attorney  
US Department of Justice  
999 18th Street, South Terrace Suite 370  
Denver, CO 80202  
(303) 844-1375  
[James.Dubois@usdoj.gov](mailto:James.Dubois@usdoj.gov)  
[Carla.Valentino@usdoj.gov](mailto:Carla.Valentino@usdoj.gov)  
[Amber.Engelkes@usdoj.gov](mailto:Amber.Engelkes@usdoj.gov)  
[MontanaBasins.ENRD@USDOJ.GOV](mailto:MontanaBasins.ENRD@USDOJ.GOV)

Bradley Bridgewater, Attorney  
Samuel D. Gollis, Attorney  
David W. Harder, Attorney  
Katherine M. Kane, Attorney  
U.S. Department of Justice  
Environment and Natural Resources Division  
Indian Resources Section  
999 18th Street, South Terrace Suite 370  
Denver, CO 80202  
(303) 844-1359  
(303) 844-1351  
(303) 844-1372  
(303) 844-1378  
[Bradley.S.Bridgewater@usdoj.gov](mailto:Bradley.S.Bridgewater@usdoj.gov)  
[Efile\\_Denver.enrd@usdoj.gov](mailto:Efile_Denver.enrd@usdoj.gov)  
[Samuel.Gollis@usdoj.gov](mailto:Samuel.Gollis@usdoj.gov)  
[David.Harder@usdoj.gov](mailto:David.Harder@usdoj.gov)  
[Katherine.Kane@usdoj.gov](mailto:Katherine.Kane@usdoj.gov)