

Montana Water Court  
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FILED

JUN 30 2020

Montana Water Court

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

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CLAIMANT: Webber Farms Inc.

OBJECTORS: ~~Apsaalooke (Crow) Tribe~~; United States of America  
(Bureau of Indian Affairs); Darell R. Webber

CASE 43P-240  
43P-165-00  
43P 185055-00

**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, or if there are errors in the Report.

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 No. 43P 185055-00 appeared in the Preliminary Decree for the Bighorn River, Below Greybull River (Basin 43P) with issue remarks. The United States of America (Bureau of Indian Affairs) ("BIA") filed Objections to the claim.

2. On January 28, 2019 the above captioned claim was consolidated into Case 43P-240.

3. On January 22, 2020, a Stipulation was filed with the Court. The Stipulation indicated that the Claimants and the BIA had agreed to the modification of Claim No. 43P 185055-00.

4. Pursuant to the Stipulation, the parties propose that Claim No. 43P 185055-00 be modified as follows:

Priority Date: March 22, 1915

Type of Right: Use

Point of Diversion and Place of Use:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
<u>1</u>	<u>2</u>			<u>25</u>	<u>2N</u>	<u>33E</u>	<u>Big Horn</u>
<u>2</u>	<u>3</u>			<u>25</u>	<u>2N</u>	<u>33E</u>	<u>Big Horn</u>

**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, 411 265 (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 conforms to applicable law. Claim No. 43P 185055-00 should be modified as discussed above.

#### RECOMMENDATIONS

1. Upon review of the record in this case, Claim No. 43P 185055-00 should be modified as discussed.

A Post Decree Abstract of Water Right Claim is attached to this Master’s Report for review.

DATED this 30<sup>th</sup> day of June, 2020.



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Nathan Block  
Water Master

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