

Montana Water Court  
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43B-0346-R-2021

December 10, 2021

Montana Water Court

MONTANA WATER COURT, YELLOWSTONE DIVISION  
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN  
BASIN 43B  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: Susan S. Johnson; Warren H. Johnson

CASE 43B-0346-R-2021

43B 25645-00

OBJECTOR: United States of America (USDA Forest Service)

**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 may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's 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. 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

This claim appeared in the Preliminary Decree with the following remarks:

THE TIMELY FILED OBJECTION OF THE UNITED STATES OF AMERICA WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE POINT OF DIVERSION . BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

IT APPEARS THAT THE MEANS OF DIVERSION SHOULD BE A DAM, THAT THE PIPELINE IS THE SECONDARY MEANS OF DIVERSION.

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

The United States of America (USDA Forest Service) objected to this claim. Susan S. Johnson and Warren H. Johnson filed a response to the objection entitled "counterobjection". On June 2, 2021 the parties filed a Stipulation resolving the objection. On August 31, 2021 Claimants' Notice Of Filing Documentation Addressing Issue Remarks was filed. These settlement documents are viewable in the Court's FullCourt Enterprise case management system.

### APPLICABLE LAW

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 following clarification remark should be added to the point of diversion: THE POINT OF DIVERSION IS LOCATED ENTIRELY ON PRIVATE LAND IDENTIFIED AS MINERAL SURVEY 6930 AND MINERAL SURVEY 6931.

2. The Preliminary Decree states that the means of diversion is PIPELINE. The means of diversion should be DAM with the following clarification remark: PIPELINE IS SECONDARY MEANS OF DIVERSION.

3. The following clarification remark should be added to the place of use: THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND IDENTIFIED AS MINERAL SURVEY 6930 AND MINERAL SURVEY 6931.

4. The issue remark questioning the existence of the reservoir was added in 2017 during preparation of the Preliminary Decree. A copy or copies of the resource(s) used as the basis for the issue remark was not added to the claim file.

As noted in the August 31, 2021 Claimants' Notice Of Filing Documentation Addressing Issue Remarks, the reservoir was included on the Statement of Claim, in the Temporary Preliminary Decree, and its legal description was revised during the Temporary Preliminary Decree proceedings. Absent substantiation for adding the issue remark, the previous determinations that the reservoir exists should not be disturbed. The issue remark should be removed as addressed and resolved.

5. The timely filed objection and period of diversion remarks provide notice of these changes made during the Temporary Preliminary Decree proceedings and prior to issuance of the Preliminary Decree and do not raise unresolved issues which need to be addressed. The remarks should be removed as having served their notice purposes.

#### CONCLUSION OF LAW

The settlement documents filed by the parties are sufficient to contradict and overcome the *prima facie* claim and to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (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 Preliminary 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.

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Kathryn L. W. Lambert  
Senior Water Master

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**WATER COURT**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** **43B 25645-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
SUSAN S JOHNSON  
PO BOX 399  
GARDINER, MT 59030 0399

WARREN H JOHNSON  
PO BOX 399  
GARDINER, MT 59030 0399

**Priority Date:** APRIL 19, 1905

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 15.00 GPM

THE WATER COURT HAS DETERMINED THAT A FLOW RATE QUANTIFICATION IS REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT.

**Volume:** 13.00 AC-FT

**Households:** 3

**Maximum Acres:** 5.00

**\*Source Name:** PALMER CREEK

**Source Type:** SURFACE WATER

**\*Point of Diversion and Means of Diversion:**

<b>ID</b>	<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1		SENESW	16	9S	9E	PARK

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

**Diversion Means:** DAM

PIPELINE IS SECONDARY MEANS OF DIVERSION.

THE POINT OF DIVERSION IS LOCATED ENTIRELY ON PRIVATE LAND IDENTIFIED AS MINERAL SURVEY 6930 AND MINERAL SURVEY 6931.

**Reservoir:** ONSTREAM

<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
	SENESW	16	9S	9E	PARK

**Diversion to Reservoir:** DIVERSION # 1

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

**\*Place of Use:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1	5.00		NESW	16	9S	9E	PARK

**Total:** 5.00

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND IDENTIFIED AS  
MINERAL SURVEY 6930 AND MINERAL SURVEY 6931.

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT.  
THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER  
RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE  
WATER IN ACCORD WITH HISTORICAL PRACTICES.

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