

Montana Water Court  
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43B-0404-R-2021

December 7, 2021

Montana Water Court

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

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CLAIMANT: Baobab Properties LLC, Canadian Rose LLC, and  
Livingston Equine Enterprises LLC

OBJECTOR: United States of America (Bureau of Land  
Management)

**CASE 43B-0404-R-2021**  
43B 185650-00  
43B 185651-00  
43B 185652-00  
43B 185655-00

**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, conclusion 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

The United States of America (Bureau of Land Management) objected to each of these claims. Each of these claims appeared in the Preliminary Decree with the following remark:

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

Claim 43B 185650-00 also appeared with the following remark:

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

On August 16, 2021 the previous owner – Heart K Land & Cattle Co. – and the United States of America (Bureau of Land Management) filed a Stipulation To Resolve Objections. The claims were then transferred to Baobab Properties LLC, Canadian Rose LLC, and Livingston Equine Enterprises LLC. On November 23, 2021 the current owners - Baobab Properties LLC, Canadian Rose LLC, and Livingston Equine Enterprises LLC – filed their Concurrence With Stipulation To Resolve Objections. The 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. For all of these claims, the period of diversion remark provides notice of this change made prior to issuance of the Preliminary Decree and does not raise an unresolved issue which needs to be addressed. The remark should be removed as having served its notice purpose.
2. For claim 43B 185650-00, the following clarification remark should be added to the place of use: THE PLACES OF USE ARE LOCATED ENTIRELY ON PRIVATE LAND AND DO NOT

INCLUDE THOSE FEDERAL LANDS LOCATED IN SECTION 33 OF TOWNSHIP 1 SOUTH, RANGE 10 EAST.

The remark concerning the point of diversion provides notice of this change made prior to issuance of the Preliminary Decree and does not raise an unresolved issue which needs to be addressed. The remark should be removed as having served its notice purpose.

3. For claims 43B 185651-00, 43B 185652-00, and 43B 185655-00, the following clarification remark should be added to the point of diversion: THE POINT OF DIVERSION IS LOCATED ENTIRELY ON PRIVATE LAND AND DOES NOT INCLUDE THOSE FEDERAL LANDS LOCATED IN SECTION 33 OF TOWNSHIP 1 SOUTH, RANGE 10 EAST.

4. For claims 43B 185651-00, 43B 185652-00, and 43B 185655-00, the following clarification remark should be added to the place of use: THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND AND DOES NOT INCLUDE THOSE FEDERAL LANDS LOCATED IN SECTION 33 OF TOWNSHIP 1 SOUTH, RANGE 10 EAST.

#### CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the prima facie claims.

#### 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 for each 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 185650-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BAOBAB PROPERTIES LLC  
320 39TH AVENUE EAST  
SEATTLE, WA 98112

CANADIAN ROSE LLC  
320 39TH AVENUE EAST  
SEATTLE, WA 98112

LIVINGSTON EQUINE ENTERPRISES, LLC  
C/O ACCRUIT, LLC  
55 MADISON ST, STE 625  
DENVER, CO 80206

**Priority Date:** DECEMBER 31, 1912

**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 STOCK WATERING 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:** YELLOWSTONE RIVER

**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		SWSWSE	7	2S	10E	PARK

**Period of Diversion:** MAY 15 TO AUGUST 15

**Diversion Means:** DITCH

**Ditch Name:** VALLIS DITCH

**Period of Use:** MAY 15 TO AUGUST 15

**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			NW	4	2S	10E	PARK
2			NE	4	2S	10E	PARK
3			NWNWSW	4	2S	10E	PARK
4			SE	33	1S	10E	PARK

THE PLACES OF USE ARE LOCATED ENTIRELY ON PRIVATE LAND AND DO NOT INCLUDE THOSE FEDERAL LANDS LOCATED IN SECTION 33 OF TOWNSHIP 1 SOUTH, RANGE 10 EAST.

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

**Water Right Number:** 43B 185651-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BAOBAB PROPERTIES LLC  
320 39TH AVENUE EAST  
SEATTLE, WA 98112

CANADIAN ROSE LLC  
320 39TH AVENUE EAST  
SEATTLE, WA 98112

LIVINGSTON EQUINE ENTERPRISES, LLC  
C/O ACCRUIT, LLC  
55 MADISON ST, STE 625  
DENVER, CO 80206

**Priority Date:** DECEMBER 31, 1912

**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 STOCK WATERING 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:** YELLOWSTONE RIVER

**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	6	NE	33	1S	10E	PARK

**Period of Diversion:** MAY 15 TO AUGUST 15

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

THE POINT OF DIVERSION IS LOCATED ENTIRELY ON PRIVATE LAND AND DOES NOT INCLUDE THOSE FEDERAL LANDS LOCATED IN SECTION 33 OF TOWNSHIP 1 SOUTH, RANGE 10 EAST.

**Period of Use:** MAY 15 TO AUGUST 15

**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	33	1S	10E	PARK

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND AND DOES NOT INCLUDE THOSE FEDERAL LANDS LOCATED IN SECTION 33 OF

TOWNSHIP 1 SOUTH, RANGE 10 EAST.



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

**Water Right Number:** 43B 185652-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BAOBAB PROPERTIES LLC  
320 39TH AVENUE EAST  
SEATTLE, WA 98112

CANADIAN ROSE LLC  
320 39TH AVENUE EAST  
SEATTLE, WA 98112

LIVINGSTON EQUINE ENTERPRISES, LLC  
C/O ACCRUIT, LLC  
55 MADISON ST, STE 625  
DENVER, CO 80206

**Priority Date:** DECEMBER 31, 1912

**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 STOCK WATERING 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:** YELLOWSTONE RIVER

**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		NWNWSE	33	1S	10E	PARK

**Period of Diversion:** MAY 15 TO AUGUST 15

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Ditch Name:** YELLOWSTONE RIVER DITCH

THE POINT OF DIVERSION IS LOCATED ENTIRELY ON PRIVATE LAND AND DOES NOT INCLUDE THOSE FEDERAL LANDS LOCATED IN SECTION 33 OF TOWNSHIP 1 SOUTH, RANGE 10 EAST.

**Period of Use:** MAY 15 TO AUGUST 15

**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	33	1S	10E	PARK

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND AND DOES NOT

INCLUDE THOSE FEDERAL LANDS LOCATED IN SECTION 33 OF TOWNSHIP 1  
SOUTH, RANGE 10 EAST.

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

**Water Right Number:** 43B 185655-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BAOBAB PROPERTIES LLC  
320 39TH AVENUE EAST  
SEATTLE, WA 98112

CANADIAN ROSE LLC  
320 39TH AVENUE EAST  
SEATTLE, WA 98112

LIVINGSTON EQUINE ENTERPRISES, LLC  
C/O ACCRUIT, LLC  
55 MADISON ST, STE 625  
DENVER, CO 80206

**Priority Date:** DECEMBER 31, 1912

**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.

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**Source Name:** YELLOWSTONE RIVER

**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		NWNWSE	33	1S	10E	PARK

**Period of Diversion:** JUNE 1 TO SEPTEMBER 1

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

THE POINT OF DIVERSION IS LOCATED ENTIRELY ON PRIVATE LAND AND DOES NOT INCLUDE THOSE FEDERAL LANDS LOCATED IN SECTION 33 OF TOWNSHIP 1 SOUTH, RANGE 10 EAST.

**Period of Use:** JUNE 1 TO SEPTEMBER 1

**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			NWNWSE	33	1S	10E	PARK

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND AND DOES NOT INCLUDE THOSE FEDERAL LANDS LOCATED IN SECTION 33 OF TOWNSHIP 1

SOUTH, RANGE 10 EAST.