

Montana Water Court
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43B-0407-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: Legacy Land Partners Limited Partnership; **State of Montana Board of Land Commissioners**

CASE 43B-0407-R-2021

43B 192263-00

43B 192264-00

Split Claims:

43B 30153428

43B 30153429

OBJECTORS: Legacy Land Partners Limited Partnership; State of Montana Board of Land Commissioners

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

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

Legacy Land Partners Limited Partnership claims 43B 192263-00 and 43B 192264-00 each appeared in the Preliminary Decree with the following remarks:

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

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.

Legacy Land Partners Limited Partnership objected to each claim. The State of Montana, Board of Land Commissioners ["State of Montana"] objected to each claim. The United States of America, Bureau of Reclamation ["BOR"], filed a notice of intent to appear on each claim.

On August 25, 2021 Legacy Land Partners Limited Partnership and the State of Montana filed a Stipulation For Implied Claim. Although generating implied claims is requested, the proper action is splitting the claims between the co-owners. On September 3, 2021 the BOR filed United States' Statement On Claimant's Stipulation which states that the changes requested in the Stipulation address its concerns. The settlement documents are 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.

If, at the time an appropriation is made, the appropriator is a lessee of school trust land and if the lessee makes and uses the appropriation on school trust land, the appropriation is owned by the State of Montana rather than the lessee. *Department of State Lands v. Pettibone*, 216 Mont. 361, 702 P2d 948 (1985). Implicit in this rule is the determination that the land was indeed fully vested as state school trust land at the time the appropriation was made. See *Findings of Fact, Conclusions of Law, and Memorandum*, Case No. 43A-A, June 29, 2000; *Opinion* (page 3), Case No. 41G-190, July 19, 2005, and *Opinion*, Case No. 41G-3, August 3, 2005.

The Water Court may split a claim with multiple owners into separate claims upon request of all of the claimants prior to issuance of the final decree. Rule 26, W.R.ADJ.R.

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 period of diversion and point of diversion remarks provide notice of these changes made 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.

2. For both stockwater claims 43B 192263-00 (USE right, priority date JUNE 1, 1924) and 43B 192264-00 (FILED right, priority date JUNE 1, 1929), the Statements of Claim and the Preliminary Decree include a parcel in the N2NWSW of section 36, T1S, R11E, PARK as part of the place of use. This parcel is school trust land. As stated in paragraph 8.b. and 8.c. of the Stipulation:

- b. On February 2, 1883, the General Land Office (GLO) survey for this parcel was accepted.
- c. On November 8, 1889, title to both parcels vested with the state according to the granting document, Patent Book vol. 3, pg. 429." Therefore, the State of Montana is a co-owner of each of these claimed rights.

The GLO Records copy attached to the Stipulation states the survey was approved/accepted on February 22, 1883 rather than February 2, 1883. This does not affect the analysis.

3. Claim 43B 192263-00 should be modified to represent only the Legacy Land Partners Limited Partnership portion of the claimed right. Split claim 43B 30153428 should be generated for the State of Montana portion of the claimed right.

4. Claim 43B 192263-00 should be modified as follows: the parcel in the N2NWSW section 36, T1S, R11E, PARK should be removed from the place of use.

5. The elements of claim 43B 30153428 should be the same as 43B 192263-00 except: 1) the owner should be STATE OF MONTANA, BOARD OF LAND COMMISSIONERS, and 2) the place of use should be GOVT LOT 1, N2NWSW section 36, T1S, R11E, PARK.

6. Claim 43B 192264-00 should be modified to represent only the Legacy Land Partners Limited Partnership portion of the claimed right. Split claim 43B 30153429 should be generated for the State of Montana portion of the claimed right.

7. Claim 43B 192264-00 should be modified as follows: the parcel in the N2NWSW section 36, T1S, R11E, PARK should be removed from the place of use.

8. The elements of claim 43B 30153429 should be the same as 43B 192264-00 except: 1) the owner should be STATE OF MONTANA, BOARD OF LAND COMMISSIONERS, and 2) the place of use should be GOVT LOT 1, N2NWSW section 36, T1S, R11E, PARK.

CONCLUSIONS OF LAW

The State of Montana is a co-owner of the rights claimed on 43B 192263-00 and 43B 192264-00.

The information provided by the parties is sufficient to split claims 43B 192263-00 and 43B 192264-00.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court split claims 43B 192263-00 and 43B 192264-00, generate split claims 43B 30153428 and 43B 30153429, and 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.

Kathryn L. W. Lambert
Senior Water Master

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Note: Caption and Service List Updated 11/16/2021

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

Water Right Number: **43B 192263-00** STATEMENT OF CLAIM

Version: 3 -- SPLIT POST DECREE

Status: ACTIVE

Owners: LEGACY LAND PARTNERS LIMITED PARTNERSHIP
PO BOX 1118
LIVINGSTON, MT 59047 1118

Priority Date: JUNE 1, 1924

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:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NESESW	19	1S	11E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DITCH

Ditch Name: WINDSOR DITCH

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SW	20	1S	11E	PARK
2			SWSE	20	1S	11E	PARK
3			NENE	29	1S	11E	PARK
4			N2NENW	28	1S	11E	PARK
5			NE	28	1S	11E	PARK
6			NW	27	1S	11E	PARK
7			NE	27	1S	11E	PARK
8			SE	27	1S	11E	PARK
9			SW	26	1S	11E	PARK
10			NW	35	1S	11E	PARK
11			NE	35	1S	11E	PARK

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.

192241-00 192263-00

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

Water Right Number: **43B 30153428** STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620 1601

Priority Date: JUNE 1, 1924

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		NESWSW	19	1S	11E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DITCH

Ditch Name: WINDSOR DITCH

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		1	N2NWSW	36	1S	11E	PARK

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

Water Right Number: **43B 192264-00** STATEMENT OF CLAIM

Version: 3 -- SPLIT POST DECREE

Status: ACTIVE

Owners: LEGACY LAND PARTNERS LIMITED PARTNERSHIP
PO BOX 1118
LIVINGSTON, MT 59047 1118

Priority Date: JUNE 1, 1929

Type of Historical Right: FILED

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:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NESESW	19	1S	11E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DITCH

Ditch Name: WINDSOR DITCH

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SW	20	1S	11E	PARK
2			SWSE	20	1S	11E	PARK
3			NENE	29	1S	11E	PARK
4			N2NENW	28	1S	11E	PARK
5			NE	28	1S	11E	PARK
6			NW	27	1S	11E	PARK
7			NE	27	1S	11E	PARK
8			SE	27	1S	11E	PARK
9			SW	26	1S	11E	PARK
10			N2NENW	35	1S	11E	PARK
11			NE	35	1S	11E	PARK

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.

192235-00 192264-00

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

Water Right Number: **43B 30153429** STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620 1601

Priority Date: JUNE 1, 1929

Type of Historical Right: FILED

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:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NESWSW	19	1S	11E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DITCH

Ditch Name: WINDSOR DITCH

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		1	N2NWSW	36	1S	11E	PARK