

Montana Water Court
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43B-0436-R-2020
December 6, 2021

Montana Water Court

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

* * * * *

CLAIMANTS: Coates Family Montana Home LLC; Tally Ho North
LLC

CASE 43B-0436-R-2020
43B 193742-00
43B 193745-00

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

The United States of America (USDA Forest Service) objected to Coates Family Montana

Home LLC and Tally Ho North LLC claims 43B 193742-00 and 43B 193745-00. On November 1, 2021 the parties filed a Stipulation To Resolve Objections. The Stipulation is 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 claim 43B 193742-00, the Preliminary Decree states the point of diversion legal description is the S2NENW section 12, T6S, R8E, PARK. The legal description should be the S2N2NW section 12, T6S, R8E, PARK. The following clarification remark should be added to the point of diversion: THE POINT OF DIVERSION IS LOCATED ENTIRELY ON PRIVATE LAND IDENTIFIED AS CERTIFICATE OF SURVEY NO. 48.

The following clarification remark should be added to the place of use: THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND IDENTIFIED AS CERTIFICATE OF SURVEY NO. 48.

2. For claim 43B 193745-00, the Preliminary Decree states the point of diversion and place of use legal description is the NESWNW section 12, T6S, R8E, PARK. The legal description for each should be the S2N2NW section 12, T6S, R8E, PARK.

The following clarification remark should be added to the point of diversion: THE POINT OF DIVERSION IS LOCATED ENTIRELY ON PRIVATE LAND IDENTIFIED AS CERTIFICATE OF SURVEY NO. 48.

The following clarification remark should be added to the place of use: THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND IDENTIFIED AS CERTIFICATE OF SURVEY NO. 48.

3. The Preliminary Decree includes the following remark on each claim:

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

This 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.

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.

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 193742-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: COATES FAMILY MONTANA HOME LLC
333 LEE DR APT 23
BATON ROUGE, LA 70808

TALLY HO NORTH LLC
9018 JEFFERSON HWY STE A
BATON ROUGE, LA 70809

Priority Date: DECEMBER 31, 1880

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: SPRING, UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2N2NW		12	6S	8E PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

THE POINT OF DIVERSION IS LOCATED ENTIRELY ON PRIVATE LAND IDENTIFIED AS CERTIFICATE OF SURVEY NO. 48.

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			S2N2NW		12	6S	8E PARK

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND IDENTIFIED AS CERTIFICATE OF SURVEY NO. 48.

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.

193741-00

193742-00

193745-00

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

Water Right Number: **43B 193745-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: COATES FAMILY MONTANA HOME LLC
333 LEE DR APT 23
BATON ROUGE, LA 70808

TALLY HO NORTH LLC
9018 JEFFERSON HWY STE A
BATON ROUGE, LA 70809

Priority Date: DECEMBER 31, 1880

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 26.93 GPM

Volume: 1.70 AC-FT

Households: 2

Maximum Acres: 2.10

Source Name: SPRING, UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2N2NW	12	6S	8E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	2.10		S2N2NW	12	6S	8E	PARK
Total:	2.10						

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND IDENTIFIED AS
CERTIFICATE OF SURVEY NO. 48.

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.

193741-00

193742-00

193745-00