

43B-0476-R-2021

December 17, 2021

Montana Water Court

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

* * * * *

CLAIMANTS: Catherine McPherson; Jack McPherson

CASE 43B-0476-R-2021

43B 9956-00

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, 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 (USDA Forest Service) objected to Catherine McPherson and Jack McPherson claim 43B 9956-00. This claim appeared in the Preliminary Decree with the following remarks:

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

IT APPEARS THAT THE PLACE OF USE SHOULD BE CHANGED TO SESW SEC 12, TWP 08S, RGE 07E, PARK.

On October 29, 2021 the parties filed a Stipulation To Resolve Objections. The Stipulation is 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.

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 Preliminary Decree states that the point of diversion legal description is the SWSWSE section 12, T8S, R7E, PARK. The legal description should be the SESW section 12, T8S, R7E, PARK. The following clarification remark should be added: THE POINT OF DIVERSION IS LOCATED ENTIRELY ON PRIVATE LAND, SPECIFICALLY PARCEL 2 COS 1085.

2. The Preliminary Decree states that the place of use legal description is the SESWSE section 12, T8S, R7E, PARK. The legal description should be the SESW section 12, T8S, R7E, PARK. The following clarification remark should be added: THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND, SPECIFICALLY PARCEL 2 COS 1085. The place of use issue remark should be removed as addressed and resolved.

3. 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 purposes.

CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the *prima facie* claim and to resolve the issue remark 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.

Kathryn L. W. Lambert
Senior Water Master\

Service Via USPS Mail:

Catherine McPherson
Jack McPherson
PO Box 464
Gardiner, MT 59030

Service Via Email:

Romney S. Philpott, Trial Attorney
US Department of Justice
ENRD, Natural Resources Section
999 18th Street, South Terrace Suite 370
Denver, CO 80202
(303) 844-1810
romney.philpott@usdoj.gov
carla.valentino@usdoj.gov
amber.engelkes@usdoj.gov
Montanabasins.enrd@usdoj.gov
william.bridges@usdoj.gov
efile_nrs.enrd@usdoj.gov

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

Water Right Number: **43B 9956-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CATHERINE MCPHERSON
PO BOX 464
GARDINER, MT 59030

JACK MCPHERSON
PO BOX 464
GARDINER, MT 59030

Priority Date: APRIL 26, 1971

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 13.50 GPM

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 CEDAR CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESW	12	8S	7E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

THE POINT OF DIVERSION IS LOCATED ENTIRELY ON PRIVATE LAND, SPECIFICALLY PARCEL 2 COS 1085.

Period of Use: JANUARY 1 TO DECEMBER 31

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESW	12	8S	7E	PARK

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND, SPECIFICALLY PARCEL 2 COS 1085.