

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
BIGHORN RIVER, BELOW GREYBULL RIVER (43P)

CLAIMANT: Crosby Cattle Co.; Stovall Scott Creek Ranch LLC

OBJECTORS: Apsaalooke (Crow) Tribe; United States of
America (Bureau of Indian Affairs)

CASE 43P-0153-P-2020

43P 185497-00

43P 185498-00

43P 187865-00

43P 187870-00

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 serve 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
FINDINGS OF FACT**

1. The above-captioned claims appeared in the Preliminary Decree for the Bighorn River, Below Greybull River (Basin 43P). The Apsaalooke (Crow) Tribe and the United States Bureau of Indian Affairs (“BIA”) filed Objections to the claims.

2. On January 6, 2020 the above captioned claims were consolidated into Case 43P-0153-P-2020.

3. On July 7, 2021, a Stipulation was filed with the Court. The Stipulation indicated that the parties had agreed to modify certain elements of the claims and that the proposed modifications would resolve the objections to the claims as well as the issue remarks.

4. Pursuant to the Stipulation, claim 43P 187865-00 should be dismissed.

5. Pursuant to the Stipulation, the parties propose the following modifications to claim 43P 185497-00:

Type of Historical Right: RESERVED

THIS WATER RIGHT IS A WALTON RIGHT.

THIS WATER RIGHT IS NOT PART OF THE
TRIBAL WATER RIGHT AS DEFINED IN
THE CROW COMPACT.

Point 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		N2NWNWSE	14	06S	28E	Big Horn

Place of Use:						
<u>ID</u>	<u>Govt. Lot</u>	<u>Qtr. Sec.</u>	<u>Sec.</u>	<u>Twp.</u>	<u>Rge.</u>	<u>County</u>
1		N2NWNWSE	14	06S	28E	Big Horn

6. Pursuant to the Stipulation, the parties propose the following changes to claim 43P 185498-00:

Type of Historical Right: RESERVED

THIS WATER RIGHT IS A WALTON RIGHT.

THIS WATER RIGHT IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE CROW COMPACT.

Point 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		N2NENWNE	14	06S	28E	Big Horn

Place of Use:

<u>ID</u>	<u>Govt. Lot</u>	<u>Qtr. Sec.</u>	<u>Sec.</u>	<u>Twp.</u>	<u>Rge.</u>	<u>County</u>
1		N2NENWNE	14	06S	28E	Big Horn

7. Pursuant to the Stipulation, the parties propose the following changes to claim 43P 187870-00:

Type of Historical Right: Reserved

This water right is a Walton Right.

This water right is not part of the Tribal Water Right as defined in the Crow Compact.

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA. The purpose of the Water Court is to adjudicate rights to the use of water as they existed on July 1, 1973. *In re Clark Fork River*, 254 Mont. 11, 17, 833 P.3d 1120 (Mont. 1992).

2. “The Water Court is not bound by settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court.” Rule 17(a), W.R.Adj.R; *In re Argabright*, 2014 Mont. Water LEXIS 9, 41I 265 (December 12, 2014).

3. Where a claimant agrees to reduce or limit an element of a claim, “the water court does not need to determine whether the burden of proof has been met.” Rule 17(c), W.R.Adj.R. The Court may accept the requested reduction or limitation “without further presentation of evidence.” Rule 17(c), W.R.Adj.R.

4. “State appropriative water rights and Indian reserved water rights differ in origin and definition.” *State ex rel. Greely v. Confederated Salish & Kootenai Tribes*, 219 Mont. 76, 89, 712 P.2d 754, 762 (Mont. 1985). “Indian reserved water rights are created or recognized by federal treaty, federal statutes or executive order, and are governed by federal law.” *Greely*, 219 Mont. at 89, 712 P.2d at 762. The relevant federal law at issue here is the Crow Tribe-Montana Compact.

5. Consistent with Chief Water Judge Russ McElyea’s Order Rejecting Master’s Report, Order Approving Stipulation, and Order Closing Case in Case 43O-8, filed on January 15, 2015, the claims specified as such above should be “Reserved” and the following information remarks should be added to the claim:

THIS WATER RIGHT IS A WALTON RIGHT.

THIS WATER IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE CROW COMPACT.

CONCLUSION OF LAW

1. The Stipulation conforms to applicable law. The claims should be modified as discussed above and the issue remarks should be removed from the claims.

RECOMMENDATION

1. Upon review of the record in this case, claim 43P 187865-00 should be dismissed and the remaining claims should be modified as discussed above.

Post Decree Abstracts of Water Right Claims are attached to this Master’s Report for review.

Nathan Block
Water Master

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**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
BIGHORN RIVER, BELOW GREYBULL RIVER
BASIN 43P**

Water Right Number: 43P 185497-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: STOVALL SCOTT CREEK RANCH LLC
8325 PRYOR RD
BILLINGS, MT 59101

Priority Date: MAY 7, 1868

Type of Historical Right: RESERVED

THIS WATER RIGHT IS A WALTON RIGHT.

THIS WATER RIGHT IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE CROW COMPACT.

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 BUSTER CREEK, WEST FORK

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		N2NWNWSE	14	6S	28E	BIG HORN

Period of Diversion: APRIL 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: APRIL 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			N2NWNWSE	14	6S	28E	BIG HORN

Remarks:

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE CROW INDIAN RESERVATION.

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
BIGHORN RIVER, BELOW GREYBULL RIVER
BASIN 43P**

Water Right Number: 43P 185498-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: STOVALL SCOTT CREEK RANCH LLC
8325 PRYOR RD
BILLINGS, MT 59101

Priority Date: MAY 7, 1868

Type of Historical Right: RESERVED

THIS WATER RIGHT IS A WALTON RIGHT.

THIS WATER RIGHT IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE CROW COMPACT.

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 BUSTER CREEK, WEST FORK

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		N2NENWSE	14	6S	28E	BIG HORN

Period of Diversion: APRIL 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: APRIL 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			N2NENWSE	14	6S	28E	BIG HORN

Remarks:

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE CROW INDIAN RESERVATION.

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
BIGHORN RIVER, BELOW GREYBULL RIVER
BASIN 43P**

Water Right Number: 43P 187865-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: CROSBY CATTLE CO
& RODNEY & JOSEPHINE CROSBY
PO BOX 36
COWLEY, WY 82420

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF PITCHFORK CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
BIGHORN RIVER, BELOW GREYBULL RIVER
BASIN 43P**

Water Right Number: 43P 187870-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: STOVALL SCOTT CREEK RANCH LLC
8325 PRYOR RD
BILLINGS, MT 59101

Priority Date: MAY 7, 1868

Type of Historical Right: RESERVED

THIS WATER RIGHT IS A WALTON RIGHT.

THIS WATER RIGHT IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE CROW COMPACT.

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 BUSTER CREEK, WEST FORK

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		NWSWNW	14	6S	28E	BIG HORN

Period of Diversion: APRIL 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: APRIL 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			NWSWNW	14	6S	28E	BIG HORN

Remarks:

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE CROW INDIAN RESERVATION.