

Montana Water Court
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43B-0238-R-2020

July 2, 2021

Montana Water Court

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

CLAIMANT: Robert R. Cartier

CASE 43B-0238-R-2020

43B 194618-00

43B 194619-00

43B 194620-00

43B 194832-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. Because this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

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 this 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

Claim 43B 194618-00 appeared in the Preliminary Decree with the following remarks:

THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 11/30/2015 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY ROBERT R CARTIER, 496 N 5TH ST, SAN JOSE, CA, 95112-5260.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 05/16/2008 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY EVMAR INVESTORS LLC MAIL TO MARY JOHNSTON, 1534 CHATHAM PL, PLEASANTON, CA, 94566-4513.

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

THE VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND VOLUME REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Claim 43B 194619-00 appeared in the Preliminary Decree with the following remarks:

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

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 11/30/2015 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY ROBERT R CARTIER, 496 N 5TH ST, SAN JOSE, CA, 95112-5260.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 05/16/2008 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY EVMAR INVESTORS LLC MAIL TO MARY JOHNSTON, 1534 CHATHAM PL, PLEASANTON, CA, 94566-4513.

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

THE VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND VOLUME REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Claim 43B 194620-00 appeared in the Preliminary Decree with the following remarks:

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

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. PROBLEMS MAY EXIST CONCERNING THE DIVERSION OF WATER FROM DAILEY CREEK INTO LENS LAKE.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 11/30/2015 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY ROBERT R CARTIER, 496 N 5TH ST, SAN JOSE, CA, 95112-5260.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 05/16/2008 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY EVMAR INVESTORS LLC MAIL TO MARY JOHNSTON, 1534 CHATHAM PL, PLEASANTON, CA, 94566-4513.

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NWNESW SEC 19 TWP 6S RGE 8E PARK COUNTY.

A GUIDELINE FOR THE FLOW RATE AND VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND FLOW RATE AND VOLUME REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE AND VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE AND VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Claim 43B 194832-00 appeared in the Preliminary Decree with the following remarks:

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

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 05/16/2008 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY EVMAR INVESTORS LLC MAIL TO MARY JOHNSTON, 1534 CHATHAM PL, PLEASANTON, CA, 94566-4513.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 11/30/2015 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY ROBERT R CARTIER, 496 N 5TH ST, SAN JOSE, CA, 95112-5260.

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SWSNW SEC 32 TWP 6S RGE 8E PARK COUNTY.

DITCH NAME 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.

PURSUANT TO WATER COURT ORDER, IF NO OBJECTIONS TO THIS CLAIM ARE FILED, THE CLAIMED FLOW RATE OF 300 MINERS INCHES AND VOLUME OF 3450 ACRE-FEET PER YEAR WILL BE REINSTATED.

The issue remarks were not addressed through the objection process. The Water Court is

required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence.

The December 3, 2020 Order Consolidating Case and Setting Filing Deadline included the text of the ownership issue remarks identifying Evmar Investors LLC as a possible owner of these claimed rights. The Order set a December 31, 2020 deadline for Evmar Investors LLC to file an ownership update with the Montana Department of Natural Resources and Conservation. The Order states: “If not filed by December 31, 2020, the Court will conclude that Evmar Investors LLC has determined that it does not have an ownership interest in these claimed water rights.” No ownership updates were filed. On January 21, 2021 the Order Removing Ownership Issue Remarks From Abstracts Of Claims was entered.

The April 15, 2021 Court Minutes state:

Mr. Cartier agreed with the Court’s suggestion to memorialize his determinations in these Minutes rather file additional documentation, as follows:

43B 194618-00: flow rate, period of diversion, and volume are okay as is; the reservoir is a very small watering hole, such a minor feature that it would be hard to confirm on an aerial photograph, the legal description for the reservoir is correct

43B 194619-00: the reservoir is ephemeral, seasonal so not always there to be seen; volume is okay as is

43B 194620-00: do not need to add Lens Lake; the point of diversion, flow rate, and volume are okay as is

43B 194832-00: point of diversion is okay as is; add flow rate and volume from remark

If Mr. Cartier disagrees with these Minutes, he will file a correction within 10 days of receiving the Minutes.

No correction was filed. These 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.

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 claims 43B 194618-00, 43B 194619-00, and 43B 194620-00, the various flow rate, volume, period of diversion, point of diversion, reservoir, and Lens Lake remarks should be removed as addressed and resolved.

2. For claim 43B 194832-00, the Preliminary Decree does not include a flow rate or a volume. The flow rate should be 7.50 cfs (the equivalent of 300.00 miner's inches). The volume should be 3450.00 acre feet. The flow rate and volume issue remark should be removed as addressed and resolved.

The period of diversion, point of diversion, and ditch name remarks should be removed as addressed and resolved.

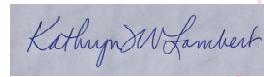
CONCLUSION OF LAW

The information provided by the claimant is sufficient to resolve the issue remarks 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 for each claim is served with this Report to confirm the recommended changes have been made in the state's

centralized record system.



Digitally signed by
Kathryn Lambert
Date: 2021.06.30 10:35:11
-06'00'

Kathryn L. W. Lambert
Senior Water Master

Service Via USPS Mail:

Robert R. Cartier
496 N 5th St
San Jose, CA 95112-5260

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

Water Right Number: 43B 194618-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ROBERT R CARTIER
496 N 5TH ST
SAN JOSE, CA 95112 5260

Priority Date: JUNE 20, 1898

Type of Historical Right: USE

Purpose (Use): FISH AND WILDLIFE

Flow Rate: 561.00 GPM

Volume: 50.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: DAILEY CREEK

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		SENE	25	6S	7E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Reservoir: OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENE	25	6S	7E	PARK

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

10 DAYS IN THE FIRST TWO WEEKS OF APRIL AND 10 DAYS IN THE FIRST TWO WEEKS OF OCTOBER.

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			NWNESE	19	6S	8E	PARK
2			SWNESE	19	6S	8E	PARK
3			SENESE	19	6S	8E	PARK

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

Water Right Number: **43B 194619-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ROBERT R CARTIER
 496 N 5TH ST
 SAN JOSE, CA 95112 5260

Priority Date: JUNE 20, 1898

Type of Historical Right: DECREED

Purpose (Use): FISH AND WILDLIFE

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS
 ONSTREAM RESERVOIR.

Volume: 300.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: DAILEY CREEK

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		SWNESW	36	6S	7E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Reservoir: OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNESW	36	6S	7E	PARK

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

10 DAYS IN THE FIRST TWO WEEKS OF APRIL AND 10 DAYS IN THE FIRST TWO
WEEKS OF OCTOBER

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			NWNESE	19	6S	8E	PARK
2			SWNESE	19	6S	8E	PARK
3			SENWSE	19	6S	8E	PARK

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

Water Right Number: **43B 194620-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ROBERT R CARTIER
 496 N 5TH ST
 SAN JOSE, CA 95112 5260

Priority Date: DECEMBER 31, 1920

Type of Historical Right: USE

Purpose (Use): FISH AND WILDLIFE

Flow Rate: 4.10 CFS

Volume: 3,000.00 AC-FT

Source Name: DAILEY CREEK

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		NWNESE	19	6S	8E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: INSTREAM

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			NWNESE	19	6S	8E	PARK
2			SWNESE	19	6S	8E	PARK
3			SENWSE	19	6S	8E	PARK

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

Water Right Number: 43B 194832-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ROBERT R CARTIER
496 N 5TH ST
SAN JOSE, CA 95112 5260

Priority Date: DECEMBER 31, 1945

Type of Historical Right: USE

Purpose (Use): FISH AND WILDLIFE

Flow Rate: 7.50 CFS

Volume: 3,450.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: SIXMILE CREEK

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		NWSEW	32	6S	8E	PARK

Period of Diversion: MARCH 1 TO DECEMBER 1

Diversion Means: HEADGATE

Ditch Name: BLAKESLEE DITCH

Reservoir: OFFSTREAM

Reservoir Name: 88.6 AC FT

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESW	19	6S	8E	PARK

Diversion to Reservoir: DIVERSION # 1

Depth: 10.00 FEET

Surface Area: 22.15 ACRES

Capacity: 88.60 ACRE-FEET

Period of Use: MARCH 1 TO DECEMBER 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			NWNESE	19	6S	8E	PARK
2			SWNESE	19	6S	8E	PARK
3			SEWSE	19	6S	8E	PARK