

ELECTRONICALLY FILED

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
1-800-624-3270  
(406) 586-4364  
watercourt@mt.gov

43B-0034-R-2020

September 15, 2021

Montana Water Court

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

\* \* \* \* \*

CLAIMANTS: Elbow Creek Ranch; State of Montana Board of Land  
Commissioners

**CASE 43B-0034-R-2020**  
43B 36722-00  
43B 214203-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Clerk of the Montana Water Court on the above stamped date. Please read this Report carefully.

You may file a written objection to the Report if you disagree with the Master's Findings of Fact, Conclusion of Law, or Recommendations; or if there are errors in the Report. The above stamped date indicates the date the Master's Report was filed and mailed. Rule 23 of the Water Adjudication Rules requires written objections to the Master's Report must be filed within 10 days of the date of the Master's Report. Because the 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. This means your objection must be received no later than 13 days from the above stamped date.

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

Elbow Creek Ranch claim 43B 36722-00 appeared in the Preliminary Decree with the following remarks:

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

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 120 MINER'S INCHES DECREED IN CASE NO. 3075 , PARK COUNTY. 43B 36722-00, 43B 214203-00.

THE TIMELY FILED OBJECTION OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE POINT OF DIVERSION . BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

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.

State of Montana Board of Land Commissioners (Trust Lands Management Division)  
[“TLMD”] claim 43B 214203-00 appeared in the Preliminary Decree with the following remarks:

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

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 120 MINER'S INCHES DECREED IN CASE NO. 3075 , PARK COUNTY. 43B 36722-00 AND 43B 214203-00.

CLAIM WAS NOT INCLUDED IN THE BASIN 43B TEMPORARY PRELIMINARY DECREE ISSUED 01/16/1985.

CLAIM FILED LATE 11/27/1990 . IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

On January 19, 2021 the parties filed a Stipulation To Resolve Issue Remarks concerning the decree exceeded issue remarks. On January 25, 2021 Elbow Creek Ranch filed a Notice Of Issue Remark Resolution for this Case plus two other Cases. On February 26, 2021 an Order Setting Filing Deadline was issued concerning claim 43B 214203-00. The Order reviews the Stipulation and sets an April 1, 2021 deadline for the parties “to file a different rationale or to file evidence

supporting the Stipulation by establishing the existence of the requested September 1, 1880 use right.” On March 29, 2021 TLMD filed a Withdrawal Of Statement Of Claim stating that it is “[r]edundant with claim 43B 214202-00”. The TLMD withdrawal of claim resolves the decree exceeded issue remark on both claims. The settlement documents are 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 42B 36722-00, the decree exceeded issue remark should be removed as addressed and resolved by the withdrawal of claim 43B 214203-00.

The other remarks concerning the period of diversion, point of diversion, and ditch name provide notice of these changes made prior to issuance of the Preliminary Decree. No proceedings are required for these remarks. These remarks should be removed as having served their notice purposes.

2. Claim 43B 214203-00 should be dismissed as withdrawn.

#### CONCLUSION OF LAW

The settlement documentation 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 accept the settlement filed in this matter 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

**Service Via Email:**

Benjamin Sudduth  
Sudduth Law, PLLC  
1050 East Main St Ste 3B  
PO Box 507  
Bozeman, MT 59771-0507  
(406) 272-2390  
benjamin@sudduthlaw.com

**Michele L. Snowberger**  
**Ben Eckstein**  
Montana Attorney General  
Agency Legal Services Bureau  
PO Box 201440  
Helena MT 59620-1440  
(406) 444-0296  
blcwatercourt@mt.gov

**Note: Service List Updated 8/13/2021**

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

**Water Right Number:** **43B 36722-00** **STATEMENT OF CLAIM**

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
ELBOW CREEK RANCH  
%MT PARADISE LLC  
1924 W STEVENS ST SUITE 203  
BOZEMAN, MT 59718

**Priority Date:** SEPTEMBER 1, 1880

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER

**Flow Rate:** 3.00 CFS

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**\*Maximum Acres:** 240.50

**\*Source Name:** ELBOW CREEK

**Source Type:** SURFACE WATER

**\*Point of Diversion and Means of Diversion:**

<b>ID</b>	<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1		NWNESE	21	5S	9E	PARK

**Period of Diversion:** MAY 1 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** WALKER-KAUFFMAN-NELSON DITCH

**Period of Use:** MAY 1 TO OCTOBER 1

**\*Place of Use:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Qtr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1	76.00		S2SW	10	5S	9E	PARK
2	4.00		W2SWSE	10	5S	9E	PARK
3	80.00		W2NW	15	5S	9E	PARK
4	18.50		W2E2NW	15	5S	9E	PARK
5	52.00		W2SW	15	5S	9E	PARK
6	10.00		W2NESW	15	5S	9E	PARK
<b>Total:</b>	240.50						

---

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

36721-00

36722-00

36727-00

36728-00

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

**Water Right Number:** **43B 214203-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** **DISMISSED**

**Late Claim:** B

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

**Priority Date:**

**Enforceable Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** ELBOW 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.