

Montana Water Court
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43B-0057-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: Craig D. Whitlock; Patricia A. Whitlock

OBJECTOR: United States of America (USDA Forest Service)

CASE 43B-0057-R-2020
43B 188033-00

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, Conclusion 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 188033-00 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 COURT FINDS THIS CLAIM TO BE DUPLICATED BY CERTIFICATE NO. 43B 46409-00, THEREFORE NO NEW WATER RIGHT CERTIFICATE WILL BE ISSUED.

On March 29, 2021 the parties filed a Stipulation To Resolve Objections. The Stipulation is viewable in the Court's FullCourt Enterprise case management system. On June 30, 2021, the Court checked the state's centralized record system and confirmed that Groundwater Certificate 43B 46409-00 has been withdrawn, that its status is now "CANCELLED".

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. The following clarification remark should be added to the point of diversion: THE POINT OF DIVERSION IS LOCATED ENTIRELY ON PRIVATE LANDS.
2. The following clarification remark should be added to the place of use: THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LANDS.
3. The duplicate issue remark should be removed as addressed and resolved.
4. 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. There are no proceedings required for this remark. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The Stipulation is sufficient to contradict and overcome the prima facie claim.

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

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

Water Right Number: 43B 188033-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: CRAIG D WHITLOCK
225 W BRIDGER CREEK RD
REED POINT, MT 59069 8004

PATRICIA A WHITLOCK
225 W BRIDGER CREEK RD
REED POINT, MT 59069

Priority Date: OCTOBER 16, 1970

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 50.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: GROUNDWATER

Source Type: GROUNDWATER

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		SESWNE	25	2S	15E	SWEET GRASS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

THE POINT OF DIVERSION IS LOCATED ENTIRELY ON PRIVATE LANDS.

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			SESWNE	25	2S	15E	SWEET GRASS

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LANDS.