

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

CLAIMANTS: James N. Maddox; Cheryl A. Traucht; Scott E. Traucht

OBJECTOR: James N. Maddox

CASE 43B-0384-R-2021
43B 192627-00

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 192627-00 appeared in the Preliminary Decree with the following remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THE RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES. 43B 76750-00, 43B 76751-00.

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

THE CLAIMED PLACE OF USE DOES NOT APPEAR TO BE IRRIGATED BY WATER FROM THE CLAIMED SOURCE.

POINT OF DIVERSION 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.

James N. Maddox objected to the claim. As stated in the June 25, 2021 Court Minutes for the June 22, 2021 Scheduling Conference, Mr. Maddox stated that he would withdraw the objection. On July 13, 2021 Mr. Maddox filed a Withdrawal Of Objection. Although the claim numbers stated in the Withdrawal are erroneous, it clearly is a withdrawal of his objection to claim 43B 192627-00. The Withdrawal is 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. As memorialized in the June 9, 2021 Court Minutes for the June 7, 2021 Scheduling Conference, Scott Traucht "explained that the ditch diverts water from the source by headgate, travels through a forested area, and delivers water to the place of use." The source issue

remark should be removed as addressed and resolved.

2. The multiple use remark identifies claims "43B" 76750-00 and "43B" 76751-00. These two United States of America (Bureau of Land Management) claims are located in Basin 400. The remark should be removed as clearly erroneous.

3. The period of diversion and point of diversion remarks provide notice of these changes made prior to issuance of the Preliminary Decree and do not raise unresolved issues which need to be addressed. The remarks should be removed as having served their notice purposes.

CONCLUSION OF LAW

The information provided by the claimant is sufficient 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:

James N. Maddox
5806 Hillsboro Rd
Nashville, TN 37215

Cheryl A. Traucht
Scott E. Traucht
201 Tom Miner Creek Rd
Emigrant, MT 59027

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

Water Right Number: 43B 192627-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JAMES N MADDOX
5806 HILLSBORO RD
NASHVILLE, TN 37215 4602

CHERYL A TRAUCHT
201 TOM MINER CREEK RD
EMIGRANT, MT 59027

SCOTT E TRAUCHT
201 TOM MINER CREEK RD
EMIGRANT, MT 59027 6010

***Priority Date:** MAY 1, 1972

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 CFS

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

Climatic Area: 5 - LOW

Maximum Acres: 42.00

Source Name: TOM MINER 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		NENESW	9	8S	6E	PARK

Period of Diversion: MAY 15 TO SEPTEMBER 15

Diversion Means: HEADGATE W/DITCH OR PIPELINE/FLOOD AND DIKE

Ditch Name: TOM MINER DITCH

Period of Use: MAY 15 TO SEPTEMBER 15

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	42.00		SE	25	7S	6E	PARK

Total: 42.00

THE PLACE OF USE IS IN TRACT 76.