

43B-0441-R-2021

July 18, 2022

Montana Water Court
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Montana Water Court

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

CLAIMANTS: Lane Land & Cattle Inc.; Mary J. Lane Revocable
Living Trust

OBJECTORS: Mary J. Lane; Lane Land & Cattle Inc.

CASE 43B-0441-R-2021

43B 113413-00

43B 113415-00

43B 113416-00

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 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

Claim 43B 113413-00 appeared in the Preliminary Decree with the following issue remarks:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 49.00 GPM PER ACRE.

THE POINT OF DIVERSION, PLACE OF USE AND MAXIMUM ACRES APPEAR TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SWNWSW SEC 26 TWP 01S R08E PARK COUNTY. THE PLACE OF USE APPEARS TO BE IN THE SE AND THE N2SW OF SEC 26 TWP 01S RGE 08E AND THE NWNENE SEC 35 TWP 01S RGE 08E WITH 50.7 TOTAL MAXIMUM ACRES. SEE DNRC MEMORANDUM DATED 11/19/1987.

Claim 43B 113415-00 appeared in the Preliminary Decree with the following issue remark:

THE POINT OF DIVERSION, PLACE OF USE, MAXIMUM ACRES, AND SOURCE APPEAR TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NENWNE SEC 35 TWP 01S RGE 08E PARK COUNTY. THE SOURCE APPEARS TO BE ROSS CREEK. THE PLACE OF USE APPEARS TO BE IN THE N2NENE OF SEC 35 TWP 01S RGE 08E WITH 10.3 TOTAL MAXIMUM ACRES. SEE MEMORANDUM DATED 11/19/1987.

Claim 43B 113416-00 appeared in the Preliminary Decree with the following issue remark:

THE POINT OF DIVERSION, MAXIMUM ACRES, PLACE OF USE AND SOURCE APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN SWSESE SEC 27 TWP 01S RGE 08E PARK COUNTY. THE SOURCE APPEARS TO BE ROSS CREEK. THE PLACE OF USE APPEARS TO BE IN THE NENENE SEC 34 TWP 01S RGE 08E AND S2S2SW SEC 26 TWP 01S RGE 08E WITH 12.3 TOTAL MAXIMUM ACRES. SEE DNRC MEMORANDUM DATED 11/19/1987.

The claimants objected to each of these claims. On October 18, 2021 the claimants filed their Response To Order Setting Filing Deadline. The Court had questions about the Response which were discussed at a January 13, 2022 scheduling conference. On March 16, 2022 the claimants filed a Notice Of Filing Of Additional Information. On June 22, 2022 the claimants filed their second Response To Order Setting Filing Deadline. The settlement 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. The Preliminary Decree included the following remark on the abstract for each of these claims:

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.

This 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. The remark should be removed as having served its notice purpose.

2. For claim 43B 113413-00, the Preliminary Decree states that the maximum acres irrigated is 15.00 and the place of use is 15.00 acres in the NENE section 35, T1S, R8E, PARK. The maximum acres irrigated should be 22.60 and the place of use should be:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
9.60	S2S2SW	26	1S	8E	PARK
2.70	NENENE	34	1S	8E	PARK
<u>10.30</u>	N2NENE	35	1S	8E	PARK
22.60					

The Preliminary Decree states that the source is Fleshman Creek. The source should be Ross Creek.

The Preliminary Decree states that the point of diversion is in the NWNENE section 35, T1S, R8E, PARK, and the ditch is Reber Ditch. The point of diversion should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>	
SWSESE	27	1S	8E	PARK	ROSS CREEK DITCH
NENWNE	35	1S	8E	PARK	REBER DITCH

The issue remarks concerning the flow rate, point of diversion, place of use, and

maximum acres should be removed as addressed and resolved.

2. For claim 43B 113415-00, the Preliminary Decree states that the maximum acres irrigated is 43.00 and the place of use:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
30.00	S2	26	1S	8E	PARK
<u>13.00</u>	N2NESE	27	1S	8E	PARK
43.00					

The maximum acres irrigated should be 50.70 and the place of use should be:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
36.00	SE	26	1S	8E	PARK
13.50	N2SW	26	1S	8E	PARK
<u>1.20</u>	NWNENE	35	1S	8E	PARK
50.70					

The Preliminary Decree states that the point of diversion is in the SWSENE section 27, T1S, R8E, PARK and the ditch name is Milesnick Ditch. The point of diversion should be the SWNWSW section 26, T1S, R8E, PARK and the ditch name should be Fleshman Ditch.

The issue remark concerning the point of diversion, place of use, and maximum acres should be removed as addressed and resolved.

3. For claim 43B 113416-00, the Preliminary Decree states that the maximum acres irrigated is 42.00 and the place of use:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
30.00	S2	26	1S	8E	PARK
<u>12.00</u>	N2NESE	27	1S	8E	PARK
42.00					

The maximum acres irrigated should be 50.70 and the place of use should be:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
36.00	SE	26	1S	8E	PARK
13.50	N2SW	26	1S	8E	PARK
<u>1.20</u>	NWNENE	35	1S	8E	PARK
50.70					

The Preliminary Decree states that the point of diversion is in the SWSENE section 27, T1S, R8E, PARK and the ditch name is Milesnick Ditch. The point of diversion should be the SWNWSW section 26, T1S, R8E, PARK and the ditch name should be Fleshman Ditch.

The issue remark concerning the point of diversion, place of use, and maximum acres should be removed as addressed and resolved.

CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the prima facie claims and 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.

Kathryn L. W. Lambert
Senior Water Master

Service Via Email:

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

Water Right Number: 43B 113413-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LANE LAND & CATTLE INC
PO BOX 1118
LIVINGSTON, MT 59047

LANE, MARY J REVOCABLE LIVING TRUST
PO BOX 118
LIVINGSTON, MT 59047

Priority Date: APRIL 20, 1887

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.63 CFS

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

Climatic Area: 3 - MODERATE

Maximum Acres: 22.60

Source Name: ROSS 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		SWSESE	27	1S	8E	PARK

Period of Diversion: JUNE 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: ROSS CREEK DITCH

2		NENWNE	35	1S	8E	PARK
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Period of Diversion: JUNE 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: REBER DITCH

Period of Use: JUNE 1 TO OCTOBER 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	9.60		S2S2SW	26	1S	8E	PARK
2	2.70		NENENE	34	1S	8E	PARK
3	10.30		N2NENE	35	1S	8E	PARK

Total: 22.60

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.

113413-00

113414-00

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

Water Right Number: 43B 113415-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LANE LAND & CATTLE INC
PO BOX 1118
LIVINGSTON, MT 59047

LANE, MARY J REVOCABLE LIVING TRUST
PO BOX 118
LIVINGSTON, MT 59047

Priority Date: OCTOBER 1, 1904

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 282.80 GPM

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

Climatic Area: 3 - MODERATE

Maximum Acres: 50.70

Source Name FLESHMAN 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		SWNWSW	26	1S	8E	PARK

Period of Diversion: JUNE 10 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: FLESHMAN DITCH

Period of Use: JUNE 10 TO OCTOBER 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	36.00		SE	26	1S	8E	PARK
2	13.50		N2SW	26	1S	8E	PARK
3	1.20		NWNE	35	1S	8E	PARK
Total:	50.70						

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.

113415-00

113416-00

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

Water Right Number: 43B 113416-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LANE LAND & CATTLE INC
PO BOX 1118
LIVINGSTON, MT 59047

LANE, MARY J REVOCABLE LIVING TRUST
PO BOX 118
LIVINGSTON, MT 59047

Priority Date: JUNE 15, 1904

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 224.40 GPM

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

Climatic Area: 3 - MODERATE

Maximum Acres: 50.70

Source Name FLESHMAN 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		SWNWSW	26	1S	8E	PARK

Period of Diversion: JUNE 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: FLESHMAN DITCH

Period of Use: JUNE 1 TO OCTOBER 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	36.00		SE	26	1S	8E	PARK
2	13.50		N2SW	26	1S	8E	PARK
3	1.20		NWNE	35	1S	8E	PARK
Total:	50.70						

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.

113415-00

113416-00