

Montana Water Court  
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43B-0648-R-2022

November 2, 2022

Montana Water Court

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

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CLAIMANTS: DePuy Enterprises LLC; Touch of Paradise LLC

OBJECTORS: Betty Jo Smith Living Trust

NOIA: DePuy Enterprises LLC

**CASE 43B-0648-R-2022**

43B 190450-00

43B 190459-00

43B 190460-00

**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 to 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**

Betty Jo Smith Living Trust objected to each of these claims. DePuy Enterprises LLC filed a notice of intent to appear for each claim. Claims 43B 190459-00 and 43B 190460-00 each appeared in the Preliminary Decree with the following remark:

AS OF 09/28/2017 , THIS WATER RIGHT APPEARS TO BE OWNED BY HUGHES RANCHES III LTD ,  
PO BOX 669 , BEEVILLE,TX , 78104-0669.

The May 20, 2022 Order Consolidating Case And Setting Filing Deadline set a July 6, 2022 deadline for Hughes Ranches III Ltd to file an ownership update. No ownership update was filed. The Order Removing Ownership Remark from both claims was entered on August 9, 2022. On September 29, 2022 the parties filed Documentation To Resolve Objections. The Documentation is 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 claim 43B 190450-00, the Preliminary Decree states that the place of use legal description is NENENE section 27, T3S, R7E, PARK. The legal description should be NENENE section 27, T3S, R9E, PARK.
2. There are no changes to be made to claims 43B 190459-00 and 43B 190460-00.

### **CONCLUSION OF LAW**

The settlement filed by the parties 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 for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

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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 190450-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** DEPUY ENTERPRISES LLC  
PO BOX 1184  
LIVINGSTON, MT 59047

**Priority Date:** JUNE 1, 1954

**Type of Historical Right:** USE

**Purpose (use):** DOMESTIC

**Flow Rate:** 30.00 GPM

**Volume:** 3.00 AC-FT

**Households:** 2

**Maximum Acres:** 5.00

**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		NENENE	27	3S	9E	PARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** WELL

**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	5.00		NENENE	27	3S	9E	PARK

**Total:** 5.00

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

**Water Right Number:** 43B 190459-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** DEPUY ENTERPRISES LLC  
PO BOX 1184  
LIVINGSTON, MT 59047

**Priority Date:** DECEMBER 31, 1882

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

**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		SW	23	3S	9E	PARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2	1	NWNW	26	3S	9E	PARK
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**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				26	3S	9E	PARK
2				23	3S	9E	PARK

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

**Water Right Number:** 43B 190460-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** DEPUY ENTERPRISES LLC  
PO BOX 1184  
LIVINGSTON, MT 59047

TOUCH OF PARADISE LLC  
4810 US HWY 89 S  
LIVINGSTON, MT 59047 9170

**Priority Date:** DECEMBER 31, 1879

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** TRAIL CREEK

**Source Type:** SURFACE WATER

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

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2W2	23	3S	9E	PARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		W2W2NW	26	3S	9E	PARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		E2NENE	27	3S	9E	PARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4		E2E2SE	22	3S	9E	PARK
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
<b>Period of Use:</b>	JANUARY 1 TO DECEMBER 31					

**Place of Use:**

<b><u>ID</u></b>	<b><u>Acres</u></b>	<b><u>Govt Lot</u></b>	<b><u>Qtr Sec</u></b>	<b><u>Sec</u></b>	<b><u>Twp</u></b>	<b><u>Rge</u></b>	<b><u>County</u></b>
1				26	3S	9E	PARK
2				27	3S	9E	PARK
3				22	3S	9E	PARK
4				23	3S	9E	PARK