

Montana Water Court  
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43B-1079-R-2022

November 30, 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: Marc C. King; Lana R. King

**CASE 43B-1079-R-2022**  
43B 36543-00

**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, conclusions 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 serve 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

### FINDINGS OF FACT

1. Marc C. King and Lana R. King are the current record owners of claim 43B 36543-00.

2. Claim 43B 36543-00 was decreed with a DNRC issue remark:

A LATE OBJECTION HAS BEEN FILED TO THE FLOW RATE, PLACE OF USE AND ACRES IRRIGATED OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

3. Claim 43B 36543-00 was previously involved in proceedings in Water Court Case 43B-170 to address a decree exceeded issue with other claims that did receive timely filed objections that were properly noticed. The late objection issue remark decreed on claim 43B 36543-00 references a Stipulation filed by the parties in Case 43B-170 on August 15, 1988 (1988 Stipulation). Proper notice was not provided that changes may be made to claim 43B 36543-00 during the Temporary Preliminary Decree, so an issue remark was placed on the claim that the changes would be made to the claim during the next decree – the “late objection” issue remark noted above.<sup>1</sup>

4. Claim 43B 36543-00 was decreed with a 112.20 gallons per minute flow rate (10.00 miner's inches), pursuant to the agreement in Case 43B-170, the flow rate should be reduced to 56.10 gallons per minute (5.00 miner's inches); additionally, the place of use was decreed as 10.31 acres, pursuant to the agreement in Case 43B-170, the place of use should be reduced to 6.50 acres:

With respect to the water rights filed for irrigation on claim No. 036543, the parties agree that all elements of the right shall remain as claimed with the exception of the flow rate which shall be changed as follows:

<u>Flow Rate Claimed</u>	<u>Flow Rate to be Decreed</u>
10 miner's inches	5 miner's inches or .125 cfs

<u>Place of Use and Number of Acres to be Decreed</u>
6.5 acres NENESE Section 35 T02N R14E

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<sup>1</sup> The same issue remark was placed on claim 43B 17166-00 (Case 43B 1095-R-2021) and claim 43B 123895-00 (Case 43B-1069-R-2022). Claim 43B 44516-00 was also addressed in the Stipulation in Case 43B-170 and a Master's Report was issued in that Case on June 3, 2022 and adopted on June 17, 2022.

5. On August 25, 2022 an Order Setting Filing Deadline was issued to determine if Claimants Marc C. King and Lana R. King agree or disagree that the following changes be made to claim 43B 36543-00:

Flow Rate:	<del>412.20 GPM</del>	<b>58.10 GPM</b>
Maximum Acres:	<del>40.34</del>	<b>8.50</b>
Place of Use:		
<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>
1	<del>40.34</del>	<b>NENESE SE</b>
<b>Total:</b>	<b>8.50</b>	<b>40.34</b>

ON AUGUST 15, 1988, THE OWNERS OF CLAIMS 43B 44516-00, 43B 17166-00, 43B 36543-00, AND 43B 123895-00 (SPLIT CLAIM 43B 30069662) ENTERED INTO A ROTATIONAL USE AGREEMENT WHEN WATER SHORTAGE MANDATES. A COPY OF THE AGREEMENT IS IN THE CLAIM FILES.

The Order included draft proposed abstracts. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude Claimants Marc C. King and Lana R. King agree with the proposed changes and a Master's Report would be issued. The Order also indicated that if Marc C. King and Lana R. King disagree that the Stipulation should be implemented, evidence addressing the issue remark should be filed by the deadline. The following language was also included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed.

### PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on claims. Sections 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. The August 15, 1988 Stipulation was signed by Paul J. Manis and Adeline Manis, the then-record-owners of claim 43B 17166-00. The 1988 Stipulation included the following language regarding successors-in-interest, heirs, and assigns:

The parties further acknowledge that this document with attached exhibits will be filed at the Sweet Grass County Clerk and Recorder's office, and each parties' successors in interest, heirs, and assigns will be bound by this marshaling and distribution agreement.

The terms of the 1988 Stipulation are plain and unambiguous.

4. A properly drafted stipulation is a form of contract to be interpreted according to contract principles. *Jensen v. Department of Labor & Indus., Job Serv. Div.*, 221 Mont. 42, 47, 718 P.2d 1335, 1338 (1986). As applied to Water Court proceedings, a stipulation serves as the terms under which the parties agree to resolve objections and may include a claimant's legally binding commitment to modify claims to resolve objections and issue remarks, and an objector's agreement to withdraw objections conditioned upon the Court's acceptance of the claim modifications. *E.g., In re Pondera Cty. Canal & Reservoir Co.*, Case 41M-202, 2020 Mont. Water LEXIS 19 (Jan. 9, 2020).

5. Current claimants Marc C. King and Lana R. King did not file legal argument showing why the 1988 Stipulation should not apply to claim 43B 36543-00. The terms of the 1988 Stipulation should be applied to claim 43B 36543-00.

#### RECOMMENDATIONS

1. Claim 43B 36543-00 should be modified as shown in Finding of Fact No.

5.

2. The late objection issue remark should be removed from claim 43B 36543-00 because the terms of the 1988 Stipulation have been applied to the claim.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

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Anika M. Stern  
Senior Water Master

**Service via USPS Mail:**

Marc C. King  
Lana R. King  
79 Otter Creek Rd  
Big Timber, MT 59011-7754

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

**Water Right Number:** 43B 36543-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MARC C KING  
79 OTTER CREEK RD  
BIG TIMBER, MT 59011 7754

LANA R KING  
79 OTTER CREEK RD  
BIG TIMBER, MT 59011 7754

**Priority Date:** JUNE 30, 1897

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 56.10 GPM

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

**Climatic Area:** 2 - MODERATELY HIGH

**Maximum Acres:** 6.50

**Source Name:** BIG TIMBER 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		NWNWNW	35	2N	14E	SWEET GRASS

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

**Diversion Means:** HEADGATE

**Ditch Name:** O'ROURKE-BRUFFEY DITCH

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

**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	6.50		NENESE	35	2N	14E	SWEET GRASS

**Total:** 6.50

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**Remarks:**

ON AUGUST 15, 1988, THE OWNERS OF CLAIMS 43B 44516-00, 43B 17166-00, 43B 36543-00, AND 43B 123895-00 (SPLIT CLAIM 43B 30069662) ENTERED INTO A ROTATIONAL USE AGREEMENT WHEN WATER SHORTAGE MANDATES. A COPY OF THE AGREEMENT IS IN THE CLAIM FILES.