

Montana Water Court
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43B-4004-S-2018

November 14, 2022

Montana Water Court

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

CLAIMANTS: Nanette L. Conley; Mark & Virginia Engle Family
Trust; Buck C. Hill; Kristine S. Klaas; Kimberly
Lewis; Walter Lewis; Travis A. Moore

CASE 43B-4004-S-2018
43B 193765-00
43B 30155736

MASTER’S REPORT

Nanette L. Conley, Mark & Virginia Engle Family Trust, Buck C. Hill, Kristine S. Klaas,
Kimberly Lewis, Walter Lewis, and Travis A. Moore claim 43B 193765-00 appeared in the
Preliminary Decree with the following remarks:

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 12/02/2014 , A PORTION
OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY WALTER
& KIMBERLY LEWIS, 145 COKEDALE RD, LIVINGSTON, MT, 59047-8917.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 06/29/2009 , A PORTION
OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY
NANETTE L CONLEY, 151 COKEDALE RD, LIVINGSTON, MT, 59047-8917.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 05/05/1999 , A PORTION
OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY REECE
CHARLES PARKS JR., 119 S MAIN ST, LIVINGSTON, MT, 59047-2668.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 03/19/1999 , A PORTION
OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY WENDY
ANN OLSON, 3 POMAJBO LN, LIVINGSTON, MT, 59047-4123.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 09/30/2009 , A PORTION
OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY ENGLE

FAMILY TRUST MARK & VIRIGINA, 222 COKEDALE RD, LIVINGSTON, MT, 59047-8921.

As Walter Lewis, Kimberly Lewis, Nanette L. Conley, and Mark & Virginia Engle Family Trust were already listed as owners when the Preliminary Decree was issued, the remarks concerning their ownership were already moot. The March 2, 2021 Order Consolidating Case And Setting Filing Deadline included the ownership remarks concerning Reece Charles Parks Jr. and Wendy Ann Olson states:

ORDERED that the deadline for **any person identified in the above issue remarks** to file an ownership update with the Bozeman DNRC Regional Office is **May 5, 2021**. If not filed by May 5, 2021, the Court will conclude that every person who has not filed an ownership update has determined that they do not have an ownership interest in this claimed water right.

On March 10, 2021 Wendy Olson filed a response stating that she would not be filing an ownership update. No ownership update was filed by Reece Charles Parks Jr. On June 11, 2021 the Order Removing Ownership Issue Remarks was entered removing the remarks concerning Reece Charles Parks Jr. and Wendy Ann Olson.

On June 4, 2018 the DNRC Memorandum was filed concerning the split of this claim. On June 28, 2021 Mark & Virginia Engle Family Trust filed a request to split the claim.

On December 14, 2021 Mark & Virginia Engle Family Trust filed a Verified Motion To Amend to amend the point of diversion and place of use. The other claimants did not file an answer to this motion. On March 2, 2022 the Order Requiring Newspaper Publication And Personal Service Of Notice Of Motion To Amend Water Right Claim was entered. The Notice states that the deadline for filing a response or objection to the motion to amend is May 13, 2022. On August 25, 2022 the certificate of personal service was filed stating that the notice was mailed March 12, 2022. No responses or objections were filed.

To be certain that the requested split was properly implemented, a DRAFT Master's Report and abstracts were sent to the claimants on September 9, 2022 with an Order Setting Filing Deadline on September 30, 2022 for the claimants to file any responses after their review. Nothing was filed.

The various documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

The Water Court may split a claim with multiple owners into separate claims upon request prior to issuance of the final decree. Rule 26, W.R.Adj.R.

Failure to file an answer brief by the opposing party is deemed an admission that the motion is well taken. Rule 2(c), U.D.C.R.

The Montana Water Court has jurisdiction to review a motion to amend pursuant to section 85-2-233(6), MCA.

Rule 15 M.R.Civ.P. restricts the scope of the amendments to the conduct, transaction, or occurrence set forth in the original pleading or, in other words, the "same set of operative facts as contained in the original pleading." *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-423 (1985). The requested amendment "merely makes more specific that which has already been alleged." *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

Notice must be published by newspaper if the requested amendments "may adversely affect other water rights." Section 85-2-233(6)(a)(i), 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 claimants amending their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The ownership remarks concerning Walter Lewis, Kimberly Lewis, Nanette L. Conley, and Mark & Virginia Engle Family Trust should be removed as moot by the time the Preliminary Decree was issued.

2. The changes requested in the Verified Motion to Amend Water Right Claim arise out of the same conduct, transaction, or occurrence specified on the original Statement of Claim, are based on the same operative facts specified in the Statement of Claim, and merely make more specific that which was already claimed on the original Statement of Claim.

3. The Preliminary Decree states that the point of diversion and place of use are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SESE	24	2S	8E	PARK
S2	19	2S	8E	PARK

The point of diversion and place of use should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
S2SE	24	2S	8E	PARK
S2	19	2S	8E	PARK

4. Claim 43B 193765-00 should be modified to represent only the Walter Lewis, Kimberly Lewis, Nanette L. Conley, Buck C. Hill, Kristine S. Klaas, and Travis A. Moore portion of the claimed right. Claim 43B 30155736 should be generated for the Mark & Virginia Engle Family Trust portion of the claimed right.

5. Claim 43B 193765-00 should be modified as follows: 1) the ownership should be modified by removing Mark & Virginia Engle Family Trust as a co-owner, and 2) the point of diversion and place of use should be modified by removing the S2SE section 24, T2S, R8E, PARK.

6. The elements of claim 43B 30155736 should be same as 43B 193765-00 except: 1) the owner should be Mark & Virginia Engle Family Trust, and 2) the point of diversion and place of use should be the S2SE section 24, T2S, R8E, PARK.

CONCLUSIONS OF LAW

1. The notice requirements for a motion to amend claim specified in section 85-2-233(6), MCA have been met.
2. The requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).
3. The Verified Motion To Amend Water Right Claim and its attachments are sufficient to contradict and overcome the prima facie claim as it appeared in the Preliminary Decree. The DNRC Memorandum and the Verified Motion are sufficient to split the claim in order to reflect the divided interests.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court grant the Verified Motion to Amend Water Right Claim and make the changes

specified in the Findings of Fact to split claim 43B 193765-00 as requested by the claimants. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes to 43B 193765-00 and the generation of split claim 43B 30155736 have been made in the state's centralized record system.

Kathryn L. W. Lambert
Senior Water Master

Service Via USPS Mail:

Nanette L. Conley
151 Cokedale Rd
Livingston, MT 59047

Mark & Virginia Engle Family Trust
% Mark & Virginia Engle, Trustees
71 Pleasant View Dr
Bozeman, MT 59718-8087

Buck C. Hill
21 Cascade Ln
Livingston, MT 59047

Kristine S. Klaas
Travis A. Moore
1546 Tempest Ct Apt 108
Bozeman, MT 59718-6736

Kimberly Lewis
Walter Lewis
145 Cokedale Rd
Livingston, MT 59047-8917

Note: Caption Updated 11/7/22

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

Water Right Number: 43B 193765-00 STATEMENT OF CLAIM

Version: 3 -- SPLIT POST DECREE

Status: ACTIVE

Owners:

NANETTE L CONLEY
151 COKEDALE RD
LIVINGSTON, MT 59047

BUCK C HILL
894 HWY 10 W
LIVINGSTON, MT 59047

WALTER LEWIS
145 COKEDALE RD
LIVINGSTON, MT 59047 8917

KIMBERLY LEWIS
145 COKEDALE RD
LIVINGSTON, MT 59047 8917

TRAVIS A MOORE
1546 TEMPEST CT APT 108
BOZEMAN, MT 59718 6736

KRISTINA S KLAAS
1546 TEMPEST CT APT 108
BOZEMAN, MT 59718 6736

Priority Date: APRIL 1, 1970

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 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		S2	19	2S	9E	PARK

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			S2	19	2S	9E	PARK

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

Water Right Number: 43B 30155736 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: ENGLE, MARK & VIRGINIA FAMILY TRUST
%MARK & VIRGINIA ENGLE TRUSTEES
71 PLEASANT VIEW DR
BOZEMAN, MT 59718 8087

Priority Date: APRIL 1, 1970

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 WATER 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 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		S2SE	24	2S	8E	PARK

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			S2SE	24	2S	8E	PARK