

Montana Water Court
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43O-0263-P-2019

November 15, 2022

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
LITTLE BIGHORN RIVER - BASIN 43O

CLAIMANTS: Sunlight Ranch Co.; Columbus Peak Ranch LLC	CASE 43O-0263-P-2019
	43O 190167-00
OBJECTORS: Apsaalooke (Crow) Tribe; United States of	43O 190168-00
America (Bureau of Indian Affairs); United States	43O 190184-00
of America (National Park Service)	43O 190186-00

ORDER REINSTATING CLAIMS

On September 23, 2022, Sunlight Ranch Co. (“Sunlight Ranch”) and Columbus Peak Ranch LLC (“Columbus Peak”) (collectively, “Petitioners”) filed a Petition to Reopen and Review Final Decree (“Petition”). The Petition asks the Court to reinstate water right claims 43O 190167-00, 43O 190168-00, 43O 190184-00, and 43O 190186-00 (collectively, the “Claims”). The Water Court previously dismissed the Claims. The Petition is unopposed by the parties that previously objected to the Claims. For the reasons set forth in this Order, the Court grants the relief requested in the Petition and reinstates the Claims.

The Court reopens this case for these Claims only. The Court also advises the parties that the case number for this case has been modified from 43O-0263 to 43O-0263-P-2019 to reflect the Court’s updated case management system protocol.

BACKGROUND

The Water Court included the Claims in the Preliminary Decree for Basin 430, the Little Bighorn River Basin, issued on March 25, 2010. The Preliminary Decree describes each of the Claims as a reserved water right to use water from springs and surface water sources in Big Horn County for stock water use. The Preliminary Decree abstracts describe the place of use for the Claims as within aliquot parts of several sections in Township 9 South, Range 33 East in Big Horn County. The Preliminary Decree abstracts identify William P. Yellowtail as the owner of all the Claims. All the abstracts contain an information remark saying the Claims are within the boundary of the Crow Indian Reservation and include the following issue remark:

**NO REVIEW OR DETERMINATION OF THE CLAIMED TYPE OF
HISTORICAL RIGHT HAS BEEN MADE. ADDITIONAL EVIDENCE
MAY BE REQUIRED BEFORE THIS CLAIM CAN BE DECREED.**

The Apsaalooke (Crow) Tribe (“Tribe”) and the United States of America, Bureau of Indian Affairs (“BIA”) (collectively, “Objectors”) objected to the Claims and to several other claims the Preliminary Decree identified as owned by William P. Yellowtail. On June 1, 2016, the Water Court consolidated the Claims and other claims into Case 430-263 to address the issue remarks and objections. The Court included Carson Yellowtail on the consolidation order service list as a “potential owner.”

As of the date the Court consolidated the case it appears William P. Yellowtail still owned the property comprising the places of use. However, soon after consolidation, William P. Yellowtail evidently conveyed the property to Fred D. and Gwen K. Wacker. There is no indication of a reservation of water rights, so the conveyance included appurtenant water rights, including the Claims. Section 85-2-403, MCA. Ownership updates that included the Claims were submitted to DNRC on July 27, 2016.

The Wackers evidently owned the property comprising the places of use and appurtenant water rights until December 14, 2016 when they conveyed the property to

Carson R. and Mamie S. Yellowtail.¹ Again, there is no indication of a reservation of water rights, so conveyance included appurtenant water rights, including the Claims. Apparently, either ownership update forms were not submitted to DNRC, applicable fees were not paid, or both. Consequently, DNRC did not update ownership and the record owner of the Claims remained in the Wackers' names.

Following case consolidation, a number of filings and proceedings took place relating to the Claims, including the following:²

- September 1, 2017. The Objectors moved to dismiss the Claims on the basis that Carson and Mamie Yellowtail were unresponsive to case filings. The motion was served on both the Wackers and Carson Yellowtail, but not on Mamie Yellowtail. Neither the Wackers nor the Yellowtails responded to the motion.
- September 27, 2017. The Court denied the motion to dismiss the Claims, but ordered the Wackers be “removed from the heading and service list for this Case” and be dismissed as owners of the Claims “in the Master’s Report” (which had not yet been issued) because they had transferred property without reserving water rights. (Sept. 27, 2017 Order at 2). The Court set an October 19, 2017 deadline for Carson and Mamie Yellowtail to assert an interest in the Claims. The order stated:

If not filed by the deadline, Carson and Mami Yellowtail will be removed from the service list as potential owners and the water rights appurtenant to their places of use may be dismissed or their places of use removed from the claims during proceedings.

The order included Carson Yellowtail on the service list, but did not include Mamie Yellowtail. The Order also included the Wackers on the service list, noting it was the last order they would receive even though they remained the record owner of the Claims because the Master’s Report had not yet been issued.

¹ The Petition references Exhibit A to the motion to dismiss as evidence. The Court file does not include an Exhibit A, so the Court cannot confirm the accuracy of this statement, but assumes it to be true for purposes of the issue addressed in this Order.

² Because the Court closed this case prior to moving to Full Court Enterprise, the prior proceedings were not docketed electronically. When the Court reopened the case, it docketed the entire prior case file as docket entry no. 1.00. Documents contained in the prior file are referenced by their respective filing dates.

- January 5, 2018. Apparently neither Carson Yellowtail nor Mamie Yellowtail responded to the order. The Court then set a February 9, 2018 deadline for the *Objectors* to explain why the Claims should be dismissed. The Order did not require any filing from the claimants. The order included Carson Yellowtail on the service list as a “potential owner” and noted it would be the “last order” to him. The order did not include Mamie Yellowtail on the service list.
- February 9, 2018. The Objectors withdrew their motion to dismiss and recommended a resolution of their objections. The Objectors did not include Carson Yellowtail or Mamie Yellowtail on the service list.
- February 21, 2018. The Court issued a third order setting a filing deadline. The order described proposed modifications to the Claims based upon the Objectors’ February 9, 2018 filing. As to each of the Claims, the order indicated they would be dismissed unless by April 11, 2018 “parties file statements agreeing or disagreeing with changes.” The order did not include Carson Yellowtail or Mamie Yellowtail on the service list.
- May 22, 2018. The water master issued a Master’s Report recommending dismissal of the Claims. The report did not include Carson Yellowtail or Mamie Yellowtail on the service list. The abstracts attached to the report identify Fred D. Wacker and Gwen K. Wacker as the record owners of the Claims. The Master’s Report also did not include the Wackers on the service list. The caption of the report also did not identify Carson Yellowtail, Mamie Yellowtail, or the Wacker’s as a claimant.
- January 30, 2019. The Court issued an Order Adopting Master’s Report. The order made certain corrections to other claims, but approved the Master’s Report. The caption and service list matched the Master’s Report.

The Petition says Sunlight and Columbus Peak acquired their interests in the property to which the Claims are appurtenant from Carson Yellowtail in February 2022. (Doc. 2.00 at 1). They filed the Petition on September 23, 2022. They served the Petition on legal counsel for the Objectors. On October 7, 2022, the United States, Bureau of

Indian Affairs filed a response saying it “does not oppose Petitioners’ request to reopen and review the decree for the limited purpose of determining whether there was a clerical or other error in the Master’s Report.” (Doc. 3.00 at 1).

ISSUE

Should the Court reinstate the Claims as active water right claims, and if so, under what conditions?

DISCUSSION

Petitioners frame their Petition as a request to correct a clerical mistake in a final decree, which the Water Court may do “at any time.” Section 85-2-234(8), MCA. The statute Petitioners cite does not apply to the Claims for two reasons. First, the Court has not issued a final decree in Basin 43O, so § 85-2-234(8), MCA, the statute Petitioners cite as authority, does not apply. Second, even if the statute did apply, dismissal of the Claims by the Court was not a clerical mistake because the water master made a recommendation to dismiss the Claims, so the actual dismissal did not “misrepresent the court's original intention.” *In re Dinosaur Ranch LLC*, 2021 Mont. Water LEXIS 999, *3-4.

Even though the Petitioners do not cite it, the Water Court has formulated a test for purposes of determining whether dismissed claims may be reinstated prior to issuance of a final decree. The Court requires a party seeking reinstatement of a dismissed claim to follow five steps: (1) the party must file a motion to reinstate, together with a supporting brief; (2) the party must provide notice to other persons who were parties to the proceeding involving the claim before it was dismissed; (3) the party must demonstrate they meet the criteria in Rules 55(c) and 60(b)(1) or (6), M.R.Civ.P.; (4) the party must satisfy any Court-imposed conditions, such as payment of delinquent fees; and (5) all objections, counterobjections, notices of intent to appear, or interventions are reinstated, as are any unresolved issue remarks. *Downs v. United States (Bureau of Indian Affairs)*, Case 43P-164-P-2019, 2021 Mont. Water LEXIS 1075, *4.

The Petition meets the first two steps because the Petition effectively is a motion, and Petitioners served it on the Objectors. The third step is the heart of the reinstatement inquiry and requires a party seeking reinstatement to prove: (a) the party proceeded with

diligence; (b) the party's neglect is excusable; (c) the party has a meritorious defense to the claim; and (d) if permitted to stand, the dismissal will affect the party injuriously.

Downs, *6. Based upon the information provided in the Petition, and the case file for this case, the Court first evaluates these four factors before examining the rest of the reinstatement test:

a. Did the claimants proceed with diligence?

The Court dismissed the claims on January 30, 2019, and Petitioners did not seek reinstatement until September 23, 2022, more than three years later. Even though this delay is long, the Court evaluates the diligence of a reinstatement request by looking to whether the delay in seeking reinstatement was reasonable under the circumstances, not by any specific time frame. *Downs*, *6. The Court also evaluates how reinstatement might delay the progress of the adjudication. *Downs*, *10.

While each new property transaction does not start a new diligence period, under the unusual facts of this case, Petitioners' request is reasonable. Petitioners say they acquired the property on February 28, 2022. As of that date, the Claims had been dismissed, so much of the information about the Claims would not have appeared in a database search associated with the property. Petitioners do not explain how or when they learned of the Claims' existence and that they were dismissed by the Court. But sometime between February and September, they must have discovered the circumstances of the dismissal and filed the Petition within seven months of the acquisition. This time period is sufficiently short to satisfy the diligence element under these circumstances, especially since reinstatement will not cause the need to conduct additional Water Court proceedings. *See In re Horvath*, 2006 Mont. Water LEXIS 4, *18 (finding a successor acted "diligently when he became aware of the problem").

b. Was claimants' neglect excusable?

The excusable neglect prong of the test looks to whether there was justification "beyond mere carelessness or ignorance of the law" for the action that caused the claim to be dismissed. *Downs*, *10 (citation omitted). In this case, Petitioners seek to reinstate

claims they did not own when the Water Court dismissed them. To analyze this element, the Court looks to the situation that existed at the time of the dismissal.

Even though Petitioners do not frame their analysis around the correct test, they provide a chronology and analysis showing that notice from the Water Court to the record owners (the Wackers) stopped as of the September 27, 2017 Order even though the order said they would not be removed as owners until a Master's Report was issued. The Master's Report was not issued until May 22, 2018. Until the Court issued an order removing the Wackers from the claims, or notice that all steps had been taken to update ownership, the Wackers should have continued to receive notice because they remained the record owner of the claims.

Notice as to Carson and Mamie Yellowtail stopped after the Water Court issued its January 5, 2018 second Order Setting Filing Deadlines even though the order did not require anything from the Yellowtails. Instead, the January 5, 2018 Order required the *Objectors* to explain why the Claims should be dismissed. (Jan. 5, 2018 Order at 2). The Yellowtails were not objectors, so the Order required nothing from them. However, the Court did not include either Carson Yellowtail or Mamie Yellowtail on the service list for any subsequent orders or filings.

As Petitioners also note, ultimately the Objectors withdrew their prior request that the Claims be dismissed. (Objectors Resp. to Order, February 9, 2018). Nonetheless, even though no dismissal request was pending, the Master's Report recommended dismissal of the Claims. The Master's Report did not state a specific reason for the dismissal recommendation, and was not served on either the Wackers or Carson or Mamie Yellowtail.

Claim dismissal is the most severe action the Water Court may take when adjudicating water rights because, unless reinstated, dismissed claims no longer provide authorization to use water and are not included in a final decree. However, dismissing a claim is within the Court's authority when a claimant fails "to comply with rules and orders." *Lewis v. Etna Ditch Co.*, Case 76HA-0212; 2022 Mont. Water LEXIS 187, *3. But before doing so the Court articulates a reason for dismissal and provides notice to the

owner of the claim with an opportunity to cure whatever neglect or other action led to the imminent dismissal. *See, e.g., In re Owens*, Case 39E-2001-R-2021, 2022 Mont. Water LEXIS 375 (Order Denying Request to Reinstate Claim). If the Court finds the substantive and procedural grounds for dismissal were met, the Court will decline to reinstate a claim. Conversely, if on a request for reinstatement the Court finds neglect to have been excusable, the Court may order reinstatement. *See, In re Williams Ranches, Inc.*, Case 40F-0400-R-2020, 2020 Mont. Water LEXIS 555 (Order Granting Motions and Reinstating Claim).

If the Court had kept the Wackers on the service list as record owners, and the Yellowtails on the service list as potential owners, and they failed to respond to Court orders after receiving notice, Petitioners' request would have much less merit because the record reflects little material effort to comply with the Court's orders for which they did receive notice. However, in light of the severity of the sanction the Court ultimately imposed, the Court cannot assume they would have continued the pattern of noncompliance with Court orders, especially after the Objectors withdrew their motion to dismiss the Claims.

As Petitioners correctly note, because the Objectors withdrew their motion to dismiss the Claims, the water master's grounds for dismissing them apparently was a sanction. However, the Master's Report did not include a sanctions analysis or give notice beyond saying failure to assert an interest "*may* result in sanctions, up to and including entry of default and termination of a water right claim." (Sept. 27, 2017 Order at 3, emphasis added). While the water master cautioned the Yellowtails of the risk and scope of potential sanctions, notions of due process call for notice and the opportunity for a hearing before the Court ultimately does impose a sanction that terminates a property interest in a water right. *Compare, Lindsey's v. Goodover*, 264 Mont. 489, 497, 872 P.2d 767, 772 (1994) (due process requires notice before M.R.Civ.P. Rule 11 sanctions); *Great N. Ry. v. Roosevelt Cnty.*, 134 Mont. 355, 364, 332 P.2d 501, 506 (1958) (due process requires notice be given of proceedings adversely affecting legal interest in property). Because the Court gave no notice to either the Wackers as record owners or the

Yellowtails as potential owners, the due process aspects of imposing this type of sanction – termination of a water right – make any prior neglect sufficiently excusable to meet this element of the reinstatement test.

c. Do the claimants have a meritorious defense?

The Court evaluates the meritorious defense element in part in relation to whether any objection has been raised, and the potential response to the objection. *In re Owens*, 2022 Mont. Water LEXIS 375, *5. Unlike the situation in *Downs*, which involved a substantive question of whether a water right was abandoned as asserted by an objector, no substantive objections to the Claims existed at the time the Court dismissed them. The Objectors' February 9, 2018 Response specified the notice remarks necessary to resolve their concerns. The Objectors' October 7, 2022 Response (Doc. 3.00) confirms they do not dispute the Petition to the extent it corrects errors. Modifying the claims to incorporate the remarks from the February 9, 2018 Response also resolves the notice only issue remarks on the Claims.

d. Will the dismissal affect the claimants injuriously?

Petitioners do not specifically say how they will be injured if the Court does not reinstate the Claims. However, the Court presumes based upon the acquisition of the rights and the filing of the necessary ownership update forms and payment of the requisite fees that Petitioners value the Claims. Failure to reinstate the claims will injure Petitioners by causing loss of a property interest they believe they purchased.

As to the final two elements of the reinstatement test (the party must satisfy any Court-imposed conditions, such as payment of delinquent fees; and all objections, counterobjections, notices of intent to appear, or interventions are reinstated, as are any unresolved issue remarks) nothing further is required. No fees are due, and the Petitioners confirm they accept the conditions required by Objectors in their February 9, 2018 filing. Reinstatement does not revive any unresolved issue remarks because the only remarks were notice-only as to the type of right, which is resolved by the confirmed reserved right status of the claims. Reinstatement will not require further proceedings that may delay the progress of the adjudication.

To summarize, the Court does not lightly reinstate claims because to do so without a careful inquiry interferes with the orderly adjudication of existing water rights in Montana. However, largely in light of the circumstances under which the Claims were dismissed without notice of dismissal to the record owners of the Claims, and the lack of opportunity to be heard, the Claims warrant reinstatement consistent with the test the Court applies.

ORDER

Therefore, it is ORDERED that the Petition is GRANTED to the extent water right claims 43O 190167-00, 43O 190168-00, 43O 190184-00, and 43O 190186-00 are reinstated as active claims and modified to incorporate the conditions necessary to resolve Objectors' objections, as set forth in their February 9, 2018 Response. The reinstatement and modification of the Claims resolves all objections and issue remarks, so upon issuance of this Order the Claims and this case are CLOSED.

Post-decree abstracts of the Claims, as reinstated and modified, are attached to this Order to confirm the changes to the Claims have been made in the State's centralized water rights database.

Stephen R. Brown
Associate Water Judge

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Brenda Yellowtail
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Carson R. Yellowtail
Mamie S. Yellowtail
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Wyola, MT 59089-0164

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
LITTLE BIGHORN RIVER
BASIN 43O**

Water Right Number: 43O 190167-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SUNLIGHT RANCH CO
PO BOX 30825
SALT LAKE CITY, UT 84130 0825

Priority Date: MAY 7, 1868

Type of Historical Right: RESERVED

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: SPRING, UNNAMED TRIBUTARY OF SPORT 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		NENWNW	23	9S	33E	BIG HORN

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			NENWNW	23	9S	33E	BIG HORN

Remarks:

THIS WATER RIGHT IS A WALTON RIGHT.

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE CROW INDIAN RESERVATION.

THIS WATER RIGHT IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE CROW COMPACT.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
LITTLE BIGHORN RIVER
BASIN 43O**

Water Right Number: 43O 190168-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: COLUMBUS PEAK RANCH LLC
PO BOX 1083
DAYTON, WY 82836 1083

Priority Date: MAY 7, 1868

Type of Historical Right: RESERVED

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: SPRING, UNNAMED TRIBUTARY OF LODGE GRASS CREEK

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		NWSENW	15	9S	33E	BIG HORN

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			NWSENW	15	9S	33E	BIG HORN

Remarks:

THIS WATER RIGHT IS A WALTON RIGHT.

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE CROW INDIAN RESERVATION.

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
LITTLE BIGHORN RIVER
BASIN 43O**

Water Right Number: 43O 190184-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SUNLIGHT RANCH CO
PO BOX 30825
SALT LAKE CITY, UT 84130 0825

COLUMBUS PEAK RANCH LLC
PO BOX 1083
DAYTON, WY 82836 1083

Priority Date: MAY 7, 1868

Type of Historical Right: RESERVED

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: SPORT 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		SESENE	22	9S	33E	BIG HORN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		S2NW	23	9S	33E	BIG HORN
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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			SESENE	22	9S	33E	BIG HORN
2			S2NW	23	9S	33E	BIG HORN

Remarks:

THIS WATER RIGHT IS A WALTON RIGHT.

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE CROW INDIAN RESERVATION.

THIS WATER RIGHT IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE CROW COMPACT.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
LITTLE BIGHORN RIVER
BASIN 43O

Water Right Number: 43O 190186-00 RESERVED CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: COLUMBUS PEAK RANCH LLC
PO BOX 1083
DAYTON, WY 82836 1083

Priority Date: MAY 7, 1868

Type of Historical Right: RESERVED

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: SPRING, UNNAMED TRIBUTARY OF SPORT CREEK

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		SWNWNW	16	9S	33E	BIG HORN
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
2		S2NW	17	9S	33E	BIG HORN
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
3		NENE	18	9S	33E	BIG HORN
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: LIVESTOCK DIRECT FROM SOURCE						
4		NENWNE	18	9S	33E	BIG HORN
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			SWNWNW	16	9S	33E	BIG HORN
2			S2NW	17	9S	33E	BIG HORN
3			NENE	18	9S	33E	BIG HORN
4			NENWNE	18	9S	33E	BIG HORN

Remarks:

THIS WATER RIGHT IS A WALTON RIGHT.

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE CROW INDIAN RESERVATION.

THIS WATER RIGHT IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE CROW COMPACT.