

Montana Water Court  
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ELECTRONICALLY FILED

43P-0237-P-2019

November 4, 2022

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
BIGHORN RIVER, BELOW GREYBULL RIVER (43P)

\*\*\*\*\*

CLAIMANTS: Big Horn Low Line Ditch Co.; Webber Farms Inc.  
OBJECTORS: United States of America (Bureau of Indian  
Affairs); Apsaalooke (Crow) Tribe; Timothy A.  
Webber

**CASE 43P-0237-P-2019**  
43P 165-00  
43P 20997-00  
**Implied Claim**  
**43P 30155759**

**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. The above-captioned claims appeared in the Preliminary Decree for the Bighorn River, Below Greybull River (Basin 43P). The Apsaalooke (Crow) Tribe, the United States Bureau of Indian Affairs (“BIA”) and Timothy A. Webber filed Objections to the claims.

2. On February 1, 2019 the above captioned claims were consolidated into Case 43P-0322-P-2021.

3. On August 2, 2022, a partially executed Stipulation was filed with the Court. On September 7, 2022, the Crow Tribe signed the Stipulation. The Stipulation indicated that the parties had agreed to the dismissal of claim 43P 165-00, the modification of the claim 43P 20997-00 as well as the generation of an implied claim, and that the proposed modifications would resolve the objections in the case.

4. Pursuant to the Stipulation, claim 43P 165-00 should be dismissed.

5. Pursuant to the Stipulation, claim 43P 20997-00 should be modified as follows:

**Priority Date:** November 2, 1907

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD / SPRINKLER

**Flow Rate:** 191.75 CFS

**Maximum Acres:** 5,062.55

**Place of Use Remark:**

A TOTAL OF UP TO 5,062.55 ACRES MAY BE IRRIGATED DURING ANY GIVEN IRRIGATION SEASON WITHIN THE HISTORICAL SERVICE AREA DESCRIBED IMMEDIATELY BELOW.

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Section</u> | <u>Sec.</u> | <u>Twp.</u> | <u>Rge.</u> | <u>County</u> |
|-----------|--------------|-----------------|--------------------|-------------|-------------|-------------|---------------|
| 1         |              |                 |                    | 2           | 01N         | 33E         | BIG HORN      |
| 2         |              |                 | NE                 | 3           | 01N         | 33E         | BIG HORN      |
| 3         |              |                 | NW                 | 3           | 01N         | 33E         | BIG HORN      |
| 4         |              |                 | SE                 | 3           | 01N         | 33E         | BIG HORN      |
| 5         |              |                 | SE                 | 9           | 01N         | 33E         | BIG HORN      |
| 6         |              |                 |                    | 10          | 01N         | 33E         | BIG HORN      |
| 7         |              |                 | NW                 | 11          | 01N         | 33E         | BIG HORN      |
| 8         |              |                 | N2N2               | 15          | 01N         | 33E         | BIG HORN      |
| 9         |              |                 | SE                 | 21          | 01N         | 33E         | BIG HORN      |
| 10        |              |                 | SW                 | 22          | 01N         | 33E         | BIG HORN      |
| 11        |              |                 | N2                 | 27          | 01N         | 33E         | BIG HORN      |
| 12        |              |                 | NE                 | 28          | 01N         | 33E         | BIG HORN      |
| 13        |              |                 | NW                 | 34          | 01N         | 33E         | BIG HORN      |
| 14        |              |                 | NW                 | 1           | 02N         | 33E         | BIG HORN      |
| 15        |              |                 |                    | 2           | 02N         | 33E         | BIG HORN      |
| 16        |              |                 | E2                 | 10          | 02N         | 33E         | BIG HORN      |
| 17        |              |                 |                    | 11          | 02N         | 33E         | BIG HORN      |
| 18        |              |                 |                    | 14          | 02N         | 33E         | BIG HORN      |
| 19        |              |                 | S2                 | 15          | 02N         | 33E         | BIG HORN      |
| 20        |              |                 |                    | 22          | 02N         | 33E         | BIG HORN      |
| 21        |              |                 | NW                 | 23          | 02N         | 33E         | BIG HORN      |
| 22        |              |                 | S2                 | 23          | 02N         | 33E         | BIG HORN      |
| 23        |              |                 | W2                 | 24          | 02N         | 33E         | BIG HORN      |
| 24        |              |                 | NW                 | 25          | 02N         | 33E         | BIG HORN      |
| 25        |              |                 |                    | 26          | 02N         | 33E         | BIG HORN      |
| 26        |              |                 |                    | 27          | 02N         | 33E         | BIG HORN      |
| 27        |              |                 | E2                 | 28          | 02N         | 33E         | BIG HORN      |
| 28        |              |                 |                    | 34          | 02N         | 33E         | BIG HORN      |
| 29        |              |                 |                    | 35          | 02N         | 33E         | BIG HORN      |
| 30        |              |                 | SE                 | 35          | 03N         | 33E         | BIG HORN      |
| 31        |              |                 | SW                 | 36          | 03N         | 33E         | BIG HORN      |

**Remarks:**

A PORTION OF THE WATER RIGHT INCLUDED IN THIS CLAIM IS USED FOR IRRIGATING LAWNS AND GARDENS WITHIN THE CLAIMED PLACE OF USE AND WITHIN THE CLAIMED FLOW RATE.

CLAIMANT ADDITIONALLY DIVERTS AND CONVEYS WATER OWNED BY THE BIG HORN CONSERVATION DISTRICT UNDER THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT THROUGH THE BIG HORN LOW LINE CANAL TO IRRIGATE 39.40 POST-1973 EXPANSION ACRES OWNED BY CLAIMANT'S SHAREHOLDERS AND SITUATED WITHIN CLAIMANT'S SERVICE AREA.

43P 30048025

5. Pursuant to the Stipulation, the parties propose the creation of an implied claim from 43P 20997-00, claim 43P 30155759, mirroring the elements of claim 43P 20997-00 except as follows:

Priority Date: May 7, 1868

Type of Historical Right: Reserved

This water right is a Walton Right.

This water right is not part of the Tribal Water Right as defined in the Crow Compact.

Purpose: Irrigation

Irrigation Type: Flood / Sprinkler

Flow Rate: 15.63 CFS

Maximum Acres: 412.55

**Place of Use:**

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Section</u> | <u>Sec.</u> | <u>Twp.</u> | <u>Rge.</u> | <u>County</u> |
|-----------|--------------|-----------------|--------------------|-------------|-------------|-------------|---------------|
| 1         | 52.80        |                 | N2SE               | 9           | 01N         | 33E         | BIG HORN      |
| 2         | 68.25        |                 | S2NE               | 10          | 01N         | 33E         | BIG HORN      |
| 3         | 66.60        |                 | N2SE               | 10          | 01N         | 33E         | BIG HORN      |
| 4         | 71.50        |                 | N2SW               | 10          | 01N         | 33E         | BIG HORN      |
| 5         | 26.70        |                 | N2SW               | 11          | 01N         | 33E         | BIG HORN      |
| 6         | 6.00         | 2               | SWNE               | 15          | 01N         | 33E         | BIG HORN      |
| 7         | 65.20        |                 | S2NW               | 15          | 01N         | 33E         | BIG HORN      |
| 8         | 28.60        |                 | N2SW               | 15          | 01N         | 33E         | BIG HORN      |
| 9         | 26.90        |                 | E2NE               | 16          | 01N         | 33E         | BIG HORN      |
| Total:    | 412.55       |                 |                    |             |             |             |               |

Remarks: A portion of the water right included in this claim is used for irrigating lawns and gardens within the claimed place of use and within the claimed flow rate.

## PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA. The purpose of the Water Court is to adjudicate rights to the use of water as they existed on July 1, 1973. *In re Clark Fork River*, 254 Mont. 11, 17, 833 P.3d 1120 (Mont. 1992).

2. “The Water Court is not bound by settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court.” Rule 17(a), W.R.Adj.R; *In re Argabright*, 2014 Mont. Water LEXIS 9, 41I 265 (December 12, 2014).

## CONCLUSIONS OF LAW

1. The Stipulation entered into by the parties conforms to applicable law and, accordingly, the record supports the resolution of the objections filed by the United States and the Crow Tribe to the above-captioned claims, as well as the dismissal of claim 43P 165-00, modification of claim 43P 20997-00 and the generation of implied claim 43P 30155759. The issue remarks have been resolved and should be removed from the claims.

2. The generation of an implied claim is intended to address situations where a single statement of claim appears to contain more than one separate water right. Order Amending and Adopting Masters Report at 4, *Eliasson Ranch Company v. Rodegheiro*, Water Court Case 40A-115 (June 28, 2004) (hereinafter 40A-115 Order). In that regard, the purpose of generating an implied claim is to “separate two or more water rights into separate claims so that they are accurately identified for adjudication and administration.” *Id.* at 5. Ordinarily, the DNRC requests Water Court authorization for an implied claim pursuant to Rule 6.IV of the Water Right Claim Examination Rules. *Id.* at 4. Although this rule applies to claims being examined prior to the issuance of a preliminary decree, the Water Court has routinely cited the rule when generating implied claims post-preliminary decree. *Id.*

3. When determining whether to grant an implied claim, the Court generally relies on the statement of claim and any material in the claim file that helps to clarify that

information. 40A-115 Order at 4. As previously recognized by the Court, “[t]he most common indicator for an implied claim is an overstatement of some element of the claim on a single statement of claim form, such as: listing points of diversion on two or more sources[.]” *Id.* at 4-5.

4. An implied claim should be generated as discussed above.

### **RECOMMENDATIONS**

1. Upon review of the record in this case, the claims should be modified, and implied claims should be generated as discussed above. The issue remarks should be removed from the claims. The objections should be resolved.

Post Decree Abstracts of Water Right Claims are attached to this Master’s Report for review.

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Nathan Block  
Senior Water Master

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**Note: Caption Updated 11-4-2022**

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**BIGHORN RIVER, BELOW GREYBULL RIVER**  
**BASIN 43P**

**Water Right Number:** 43P 165-00 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** WEBBER FARMS INC  
% DARELL R WEBBER  
RT 1 BOX 1103  
HARDIN, MT 59034 9713

**Priority Date:**

**Type of Historical Right:**

**Purpose (use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** WASTE & SEEPAGE, UNNAMED TRIBUTARY OF BIGHORN RIVER

**Source Type:** SURFACE WATER

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

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.



**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
BIGHORN RIVER, BELOW GREYBULL RIVER  
BASIN 43P**

**Water Right Number:** 43P 20997-00 RESERVED CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** BIG HORN LOW LINE DITCH CO  
% BECKY TORSKE  
208 N CENTER  
HARDIN, MT 59034

**Priority Date:** NOVEMBER 2, 1907

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 191.75 CFS

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

**Climatic Area:** 1 - HIGH

**Maximum Acres:** 5,062.55

**Source Name:** BIGHORN 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         |                 | SWNESW         | 34         | 1N         | 33E        | BIG HORN      |

**Period of Diversion:** MARCH 15 TO NOVEMBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** BIG HORN LOW LINE CANAL

**Period of Use:** MARCH 15 TO NOVEMBER 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         |              |                 |                | 2          | 1N         | 33E        | BIG HORN      |
| 2         |              |                 | NE             | 3          | 1N         | 33E        | BIG HORN      |
| 3         |              |                 | NW             | 3          | 1N         | 33E        | BIG HORN      |
| 4         |              |                 | SE             | 3          | 1N         | 33E        | BIG HORN      |
| 5         |              |                 | SE             | 9          | 1N         | 33E        | BIG HORN      |
| 6         |              |                 |                | 10         | 1N         | 33E        | BIG HORN      |
| 7         |              |                 | NW             | 11         | 1N         | 33E        | BIG HORN      |
| 8         |              |                 | N2N2           | 15         | 1N         | 33E        | BIG HORN      |
| 9         |              |                 | SE             | 21         | 1N         | 33E        | BIG HORN      |
| 10        |              |                 | SW             | 22         | 1N         | 33E        | BIG HORN      |
| 11        |              |                 | N2             | 27         | 1N         | 33E        | BIG HORN      |
| 12        |              |                 | NE             | 28         | 1N         | 33E        | BIG HORN      |

|    |    |    |    |     |          |
|----|----|----|----|-----|----------|
| 13 | NW | 34 | 1N | 33E | BIG HORN |
| 14 | NW | 1  | 2N | 33E | BIG HORN |
| 15 |    | 2  | 2N | 33E | BIG HORN |
| 16 | E2 | 10 | 2N | 33E | BIG HORN |
| 17 |    | 11 | 2N | 33E | BIG HORN |
| 18 |    | 14 | 2N | 33E | BIG HORN |
| 19 | S2 | 15 | 2N | 33E | BIG HORN |
| 20 |    | 22 | 2N | 33E | BIG HORN |
| 21 | NW | 23 | 2N | 33E | BIG HORN |
| 22 | S2 | 23 | 2N | 33E | BIG HORN |
| 23 | W2 | 24 | 2N | 33E | BIG HORN |
| 24 | NW | 25 | 2N | 33E | BIG HORN |
| 25 |    | 26 | 2N | 33E | BIG HORN |
| 26 |    | 27 | 2N | 33E | BIG HORN |
| 27 | E2 | 28 | 2N | 33E | BIG HORN |
| 28 |    | 34 | 2N | 33E | BIG HORN |
| 29 |    | 35 | 2N | 33E | BIG HORN |
| 30 | SE | 35 | 3N | 33E | BIG HORN |
| 31 | SW | 36 | 3N | 33E | BIG HORN |

A TOTAL OF UP TO 5,062.55 ACRES MAY BE IRRIGATED DURING ANY GIVEN IRRIGATION SEASON WITHIN THE HISTORICAL SERVICE AREA DESCRIBED IMMEDIATELY BELOW.

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**Remarks:**

IMPLIED CLAIM NO. 43P 30155759 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

A PORTION OF THE WATER RIGHT INCLUDED IN THIS CLAIM IS USED FOR IRRIGATING LAWNS AND GARDENS WITHIN THE CLAIMED PLACE OF USE AND WITHIN THE CLAIMED FLOW RATE.

CLAIMANT ADDITIONALLY DIVERTS AND CONVEYS WATER OWNED BY THE BIG HORN CONSERVATION DISTRICT UNDER THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT THROUGH THE BIG HORN LOW LINE CANAL TO IRRIGATE 39.40 POST-1973 EXPANSION ACRES OWNED BY CLAIMANT'S SHAREHOLDERS AND SITUATED WITHIN CLAIMANT'S SERVICE AREA.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
BIGHORN RIVER, BELOW GREYBULL RIVER  
BASIN 43P**

**Water Right Number:** 43P 30155759 STATEMENT OF CLAIM

**Version:** 1 -- ORIGINAL RIGHT

**Status:** ACTIVE

**Owners:** BIG HORN LOW LINE DITCH CO  
% BECKY TORSKE  
208 N CENTER  
HARDIN, MT 59034

**Priority Date:** MAY 7, 1868

**Type of Historical Right:** RESERVED

THIS WATER RIGHT IS A WALTON RIGHT.

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

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 15.63 CFS

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

**Climatic Area:** 1 - HIGH

**Maximum Acres:** 412.55

**Source Name:** BIGHORN 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         |                 | SWNESW         | 34         | 1N         | 33E        | BIG HORN      |

**Period of Diversion:** MARCH 15 TO NOVEMBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** BIG HORN LOW LINE CANAL

**Period of Use:** MARCH 15 TO NOVEMBER 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         | 52.80        |                 | N2SE           | 9          | 1N         | 33E        | BIG HORN      |
| 2         | 68.25        |                 | S2NE           | 10         | 1N         | 33E        | BIG HORN      |
| 3         | 66.60        |                 | N2SE           | 10         | 1N         | 33E        | BIG HORN      |
| 4         | 71.50        |                 | N2SW           | 10         | 1N         | 33E        | BIG HORN      |
| 5         | 26.70        |                 | N2SW           | 11         | 1N         | 33E        | BIG HORN      |
| 6         | 6.00         | 2               | SWNE           | 15         | 1N         | 33E        | BIG HORN      |
| 7         | 65.20        |                 | S2NW           | 15         | 1N         | 33E        | BIG HORN      |
| 8         | 28.60        |                 | N2SW           | 15         | 1N         | 33E        | BIG HORN      |

|               |              |      |    |    |     |          |
|---------------|--------------|------|----|----|-----|----------|
| 9             | <u>26.90</u> | E2NE | 16 | 1N | 33E | BIG HORN |
| <b>Total:</b> | 412.55       |      |    |    |     |          |

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**Remarks:**

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 43P 20997-00.

A PORTION OF THE WATER RIGHT INCLUDED IN THIS CLAIM IS USED FOR IRRIGATING LAWNS AND GARDENS WITHIN THE CLAIMED PLACE OF USE AND WITHIN THE CLAIMED FLOW RATE.