

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

CLAIMANT: Victory Irrigation District

CASE 43P-0246-P-2018
43P 2483-00

OBJECTORS: Apsaalooke (Crow) Tribe; United States of
America (Bureau of Indian Affairs)

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. Claim 43P 2483-00 appeared in the Preliminary Decree for the Bighorn River, Below Greybull River (Basin 43P) with issue remarks. The Apsaalooke (Crow) Tribe and the United States of America (Bureau of Indian Affairs) (“BIA”) filed Objections to the claim.

2. On August 6, 2018 the above captioned claim was consolidated into Case 43P-0246-P-2018.

3. On June 29, 2022, a Stipulation was filed with the Court. The Stipulation indicated that the Claimant and the Objectors had agreed to the modification of claim 43P 2483-00.

4. Pursuant to the Stipulation, the parties propose that claim 43P 2483-00 be modified as follows:

Maximum Acres: 2,340

***Place of Use:**

ID	Acres	Qtr Sec	Sec	Twtp	Rge	County
1			1	3N	33E	Big Horn
2		N2	12	3N	33E	Big Horn
3		W2W2	5	3N	34E	Big Horn
4			6	3N	34E	Big Horn
5			7	3N	34E	Big Horn
6		W2NE	3	4N	34E	Yellowstone
7		W2	3	4N	34E	Yellowstone
8		E2E2	4	4N	34E	Yellowstone
9		SW	4	4N	34E	Yellowstone
10		SE	5	4N	34E	Yellowstone
11		NE	8	4N	34E	Yellowstone
12		E2	9	4N	34E	Yellowstone
13		NW	9	4N	34E	Yellowstone
14		SESW	9	4N	34E	Yellowstone
15		W2	10	4N	34E	Yellowstone
16		N2	16	4N	34E	Yellowstone
17		N2SE	16	4N	34E	Yellowstone
18		SW	16	4N	34E	Yellowstone

19	E2	17	4N	34E	Yellowstone
20	E2	20	4N	34E	Yellowstone
21	E2W2	20	4N	34E	Yellowstone
22	NW	21	4N	34E	Yellowstone
23	E2	29	4N	34E	Yellowstone
24	E2NW	29	4N	34E	Yellowstone
25	W2W2NW	29	4N	34E	Yellowstone
26	SW	29	4N	34E	Yellowstone
27	N2	30	4N	34E	Yellowstone
28	SESESE	30	4N	34E	Yellowstone
29	E2	31	4N	34E	Yellowstone
30	NWNW	32	4N	34E	Yellowstone
31	SWSW	32	4N	34E	Yellowstone
32	E2SESE	32	5N	34E	Yellowstone
33	S2	33	5N	34E	Yellowstone

*** ONLY 2,340 ACRES TO BE IRRIGATED DURING ANY GIVEN IRRIGATIONS SEASON WITHIN THE ACRES DESCRIBED UNDER THIS RIGHT.**

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. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 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. Rule 19, W.R.Adj.R.

3. “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).

4. Where a claimant agrees to reduce or limit an element of a claim, “the water court does not need to determine whether the burden of proof has been met.” Rule 17(c), W.R.Adj.R. The Court may accept the requested reduction or limitation “without further presentation of evidence.” Rule 17(c), W.R.Adj.R.

CONCLUSION OF LAW

1. The Stipulation conforms to applicable law. Claim 43P 2483-00 should be modified as discussed above.

RECOMMENDATION

1. Upon review of the record in this case, claim 43P 2483-00 should be modified as discussed.

A Post Decree Abstract of Water Right Claim is attached to this Master’s Report for review.

Nathan Block
Senior Water Master

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Note: Service List Updated 11-25-2022

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

Water Right Number: 43P 2483-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: VICTORY IRRIGATION DIST

PO BOX 49

CUSTER, MT 59024

THIS IRRIGATION DISTRICT WAS ESTABLISHED UNDER TITLE 85, CHAPTER 7, MCA.

THE VICTORY IRRIGATION DISTRICT BOUNDARY WAS EXTENDED BY THE THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY, CASE NO. 7448, DATED APRIL 21, 2000.

Priority Date: SEPTEMBER 9, 1908

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 90.00 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: 2,340.00

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		SESWSE	5	3N	34E	BIG HORN

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: VICTORY DITCH

Period of Use: APRIL 1 TO NOVEMBER 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				1	3N	33E	BIG HORN
2			N2	12	3N	33E	BIG HORN
3			W2W2	5	3N	34E	BIG HORN
4				6	3N	34E	BIG HORN
5				7	3N	34E	BIG HORN
6			W2NE	3	4N	34E	YELLOWSTONE
7			W2	3	4N	34E	YELLOWSTONE
8			E2E2	4	4N	34E	YELLOWSTONE
9			SW	4	4N	34E	YELLOWSTONE

10	SE	5	4N	34E	YELLOWSTONE
11	NE	8	4N	34E	YELLOWSTONE
12	E2	9	4N	34E	YELLOWSTONE
13	NW	9	4N	34E	YELLOWSTONE
14	SESW	9	4N	34E	YELLOWSTONE
15	W2	10	4N	34E	YELLOWSTONE
16	N2	16	4N	34E	YELLOWSTONE
17	N2SE	16	4N	34E	YELLOWSTONE
18	SW	16	4N	34E	YELLOWSTONE
19	E2	17	4N	34E	YELLOWSTONE
20	E2	20	4N	34E	YELLOWSTONE
21	E2W2	20	4N	34E	YELLOWSTONE
22	NW	21	4N	34E	YELLOWSTONE
23	E2	29	4N	34E	YELLOWSTONE
24	E2NW	29	4N	34E	YELLOWSTONE
25	W2W2NW	29	4N	34E	YELLOWSTONE
26	SW	29	4N	34E	YELLOWSTONE
27	N2	30	4N	34E	YELLOWSTONE
28	SESESE	30	4N	34E	YELLOWSTONE
29	E2	31	4N	34E	YELLOWSTONE
30	NWNW	32	4N	34E	YELLOWSTONE
31	SWSW	32	4N	34E	YELLOWSTONE
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