

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

* * * * *

CLAIMANTS: Sharon A. Wiegele Trust; West Dry Creek Ranch LLC

CASE 43B-0703-R-2023

43B 191985-00

43B 192022-00

43B 192024-00

43B 30160066

43B 30160067

OBJECTOR: Sharon A. Wiegele

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 to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail 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

Sharon A. Wiegele objected to each of these claims requesting they each be split between the claimants. On August 29, 2023 the parties filed a Stipulation and Joint Motion For Entry Of Corrected Water Rights ["Stipulation"]. The Stipulation includes a request to

change the source name on claim 43B 191985-00. As source is not at issue, this is deemed a motion to amend pursuant to section 85-2-233(6), MCA. On October 4, 2023 the parties filed their Addendum To Stipulation and Joint Motion For Entry Of Corrected Water Rights. The settlement documentation is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

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.

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

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 for claimants objecting to or amending their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The change requested in the motion to amend arises out of the same conduct, transaction, or occurrence specified on the original Statement of Claim, is based on the same operative facts specified in the original Statement of Claim, and merely makes more specific that which was already claimed on the original Statement of Claim.

2. For claim 43B 191985-00, the Preliminary Decree states that the source name is UNNAMED TRIBUTARY OF DRY CREEK. The claimants do not request changing the stream;

they request correcting the stream name. It is noted that the stream identified for this claim is the same as the stream for claim 43B 192022-00, which is UNNAMED TRIBUTARY OF HYALITE CREEK. The source name should be UNNAMED TRIBUTARY OF HYALITE CREEK.

3. Claim 43B 191985-00 should be modified to represent only the Sharon A. Wiegele Trust portion of the claimed right. Claim 43B 30160066 should be generated for the West Dry Creek Ranch LLC portion of the claimed right.

4. Claim 43B 191985-00 should be modified as follows: 1) the ownership should be modified by removing West Dry Creek Ranch LLC as a co-owner, 2) the flow rate should be reduced from 30.00 GPM to 15.00 GPM, 3) the volume should be reduced from 20.26 AC-FT to 10.13 AC-FT, and 4) the point of diversion and place of use should be the S2SWSE section 31, T5S, R7E, PARK.

The abstract of this claim also includes the following notice remarks:

THE MOTION OF THE COURT HAS BEEN AMENDED TO CONFORM WITH THE EVIDENCE SUBMITTED BY THE CLAIMANT TO INCLUDE CHANGES IN THE PURPOSE. BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE TEMPORARY PRELIMINARY DECREE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

A GUIDELINE FOR THE FLOW RATE AND VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND FLOW RATE AND VOLUME REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE AND VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE AND VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

These remarks provide notice of changes made during the Temporary Preliminary Decree proceedings and prior to issuance of the Preliminary Decree. The remarks do not raise unresolved issues which need to be addressed. There are no proceedings required for these remarks. The remarks should be removed as having served their notice purposes.

5. The elements of claim 43B 30160066 should be same as 43B 191985-00 except: 1) the owner should be West Dry Creek Ranch LLC, and 2) the point of diversion and place of use should be the SESW section 31, T5S, R7E, PARK.

6. Claim 43B 192022-00 should be modified to represent only the Sharon A. Wiegele Trust portion of the claimed right. Claim 43B 30160067 should be generated for the West Dry Creek Ranch LLC portion of the claimed right.

7. Claim 43B 192022-00 should be modified as follows: 1) the ownership should be

modified by removing West Dry Creek Ranch LLC as a co-owner, and 2) the point of diversion and place of use should be the S2SWSE section 31, T5S, R7E, PARK.

8. The elements of claim 43B 30160067 should be same as 43B 192022-00 except: 1) the owner should be West Dry Creek Ranch LLC, and 2) the point of diversion and place of use should be the SESW section 31, T5S, R7E, PARK.

9. Claim 43B 192024-00 appeared in the Preliminary Decree with the following remark:

AS OF 09/28/2017 , THIS WATER RIGHT APPEARS TO BE OWNED BY WEST DRY CREEK RANCH LLC , 860 E 86TH ST STE 5 , INDIANAPOLIS, IN , 46240-6860.

The Stipulation states that Sharon A. Wiegele Trust is the sole owner of this claim. The remark should be removed as having served its notice purpose.

CONCLUSIONS OF LAW

1. The requested amendment does not adversely affect other water rights as it is a correction to the abstract which does not make any change to the actual historical use of the claimed right on the ground. Notice by publication of this amendment is not required. Section 85-2-233(6), MCA.

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 settlement filed by the parties is sufficient to contradict and overcome prima facie claim 43B 191985-00 as it appeared in the Preliminary Decree and provides sufficient information to split claims 43B 191985-00 and 43B 192022-00 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 motion to amend claim 43B 191985-00 and make the changes specified in the Findings of Fact to split claims 43B 191985-00 and 43B 192022-00 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 have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

4
Electronically Signed By:
Hon. Judge Kathryn Lambert
Fri, Oct 20 2023 11:14:42 AM

Service Via Electronic Mail:

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Note: Caption Updated 10-5-23

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

Water Right Number: **43B 191985-00** STATEMENT OF CLAIM

Version: 3 -- SPLIT POST DECREE

Status: ACTIVE

Owners:
WIEGELE SHARON A TRUST
1835 460TH ST
HARRIS, MN 55032 3855

Priority Date: JULY 7, 1948

Type of Historical Right: USE

***Purpose (use):** FISH AND WILDLIFE

Flow Rate: 15.00 GPM

Volume: 10.13 AC-FT

Source Name: UNNAMED TRIBUTARY OF HYALITE 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		S2SWSE	31	5S	7E	PARK

Period of Diversion: MAY 15 TO OCTOBER 15

Diversion Means: INSTREAM

Period of Use: MAY 15 TO OCTOBER 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			S2SWSE	31	5S	7E	PARK

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

191985-00 192025-00 30160066

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

Water Right Number: **43B 30160066** STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners:
WEST DRY CREEK RANCH LLC
%ENGLEWOOD DEVELOPMENT CO
860 E 86TH ST STE 5
INDIANAPOLIS, IN 46240 6860

Priority Date: JULY 7, 1948

Type of Historical Right: USE

Purpose (use): FISH AND WILDLIFE

Flow Rate: 15.00 GPM

Volume: 10.13 AC-FT

Source Name: UNNAMED TRIBUTARY OF HYALITE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESW	31	5S	7E	PARK

Period of Diversion: MAY 15 TO OCTOBER 15

Diversion Means: INSTREAM

Period of Use: MAY 15 TO OCTOBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESW	31	5S	7E	PARK

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

191985-00 192025-00 30160066

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

Water Right Number: **43B 192022-00 STATEMENT OF CLAIM**

Version: 3 -- SPLIT POST DECREE

Status: ACTIVE

Owners:
WIEGELE SHARON A TRUST
1835 460TH ST
HARRIS, MN 55032 3855

Priority Date: JULY 7, 1948

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: UNNAMED TRIBUTARY OF HYALITE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		S2SWSE	31	5S	7E	PARK

Period of Diversion: MAY 15 TO NOVEMBER 15

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: MAY 15 TO NOVEMBER 15

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			S2SWSE	31	5S	7E	PARK

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

Water Right Number: **43B 30160067** STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners:
WEST DRY CREEK RANCH LLC
%ENGLEWOOD DEVELOPMENT CO
860 E 86TH ST STE 5
INDIANAPOLIS, IN 46240 6860

Priority Date: JULY 7, 1948

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: UNNAMED TRIBUTARY OF HYALITE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESW	31	5S	7E	PARK

Period of Diversion: MAY 15 TO NOVEMBER 15

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: MAY 15 TO NOVEMBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESW	31	5S	7E	PARK

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

Water Right Number: **43B 192024-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
WIEGELE SHARON A TRUST
1835 460TH ST
HARRIS, MN 55032 3855

Priority Date: JULY 7, 1948

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: UNNAMED TRIBUTARY OF HYALITE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr	Sec	Twp	Rge	County
1		E2SESE	31	5S	7E	PARK

Period of Diversion: MAY 15 TO NOVEMBER 15

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: MAY 15 TO NOVEMBER 15

Place of Use:

ID	Acres	Govt Lot	Qtr	Sec	Twp	Rge	County
1			E2SESE	31	5S	7E	PARK