

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: Brad Greenwood; Lorraine Greenwood; MJP
Anderson Trust

CASE 43B-0711-R-2022

43B 214604-00

43B 214620-00

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, conclusion 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

Each of these claims appeared in the Preliminary Decree with multiple issue remarks and notice remarks. The issue remarks were not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Each of these claims appeared in the Preliminary Decree with remarks identifying possible owners of the claimed rights. The September 28, 2022 Order Consolidating Case And Setting Filing Deadline set a deadline for these identified possible owners to file ownership updates. None were filed. The ownership remarks were removed by the November 28, 2022 Order Removing Ownership Remarks From Abstracts Of Claims.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence. The May 17, 2023 Court Minutes and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA set various deadlines for the claimants and the Bozeman Regional Office, Montana Department of Natural Resources and Conservation [“DNRC”], to meet, discuss the issue remarks, and file documentation resolving the issue remarks. On July 31, 2023 the DNRC Memorandum was filed. The DNRC Memorandum states that the claimants contacted the DNRC and provided additional information to resolve the issue remarks, and makes recommendations concerning the issue remarks. Nothing was filed by the claimants. The August 15, 2023 Order Setting Filing Deadline states:

Therefore, pursuant to section 85-2-248, MCA, it is

ORDERED that the deadline for the claimants to file documentation stating whether they agree or disagree with the DNRC Memorandum recommendations is **September 15, 2023**. If nothing is filed by this deadline, the Court will conclude the claimants agree with the DNRC Memorandum and proceed with making the recommended changes to these two claims.

Nothing was filed by the claimants. These documents are viewable in the Court’s FullCourt Enterprise case management system.

On May 1, 2023 the Greenwoods filed a response inquiring about making contemporary changes to their diversion and delivery system. Such changes are handled through the DNRC change application process. These inquiries should be pursued with the Bozeman DNRC Regional Office.

APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), 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 for claimants objecting to their own claims. Rule 19, W.R.ADJ.R.

FINDINGS OF FACT

1. Both claims state that the maximum acres irrigated is 5.01 acres and the place of use is in the SENE section 11, T4S, R9E, PARK and the SWSWNW section 12, T4S, R9E, PARK. Both claims have the following issue remarks:

THE PARK COUNTY WATER RESOURCES SURVEY (1951) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

USDI AERIAL PHOTOGRAPH NO. 179-130 , DATED 09/15/1979 , APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

The DNRC Memorandum states that the 5.01 acres are confirmed on a 1977 aerial photograph. The maximum acres irrigated and place of use should not be changed. The issue remarks should be removed as addressed and resolved.

2. Each of these claims has the following issue remark:

THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

Supplemental rights remarks no longer include an acreage figure. The remarks should be removed as no longer relevant.

3. For claim 43B 214604-00, the Preliminary Decree states that the means of diversion is DAM and includes reservoir data for FORNEY DAM reservoir. The DNRC Memorandum states that this is a diversion dam to create pressure/head for subsequent diversion into a pipeline, then into a ditch, and that there is no storage reservoir. The means of diversion should be DIVERSION DAM. The reservoir data should be removed as not relevant.

The Preliminary Decree states that the flow rate is 1.15 CFS and includes clarification remark: PRIMARILY A DIRECT FLOW IRRIGATION SYSTEM; FLOW RATE RETAINED. It also includes the following issue remark:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE

CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 103.00 GPM PER ACRE.

The DNRC Memorandum states that the information provided by the claimants supports the flow rate and also notes there is considerable ditch loss between the point of diversion and place of use. The flow rate quantification should not be changed. The flow rate clarification remark should be removed as no longer relevant. The flow rate issue remark should be removed as addressed and resolved.

The Preliminary Decree does not include a quantified volume. Instead, it states PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED. It also includes the following issue remark:

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 45169 TIMES THE CAPACITY OF THE RESERVOIR.

As stated above, the reservoir should be removed from the abstract of this claim. Both the volume remark and the volume issue remark are no longer relevant. The volume should remain unquantified and the following standard volume remark should be added: THE TOTAL VOLUME OF THIS RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE. The volume issue remark should be removed.

4. For claim 43B 214620-00, the Preliminary Decree states that the means of diversion is DAM. This is the same diversion and delivery system used for claim 43B 214604-00 (although the Preliminary Decree abstract does not include the reservoir data). The means of diversion should be DIVERSION DAM.

Like claim 43B 214620-00 above, the Preliminary Decree does not include a quantified volume. Instead, it states PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED. The volume should remain unquantified and the following standard volume remark should be added: THE TOTAL VOLUME OF THIS RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

5. The Preliminary Decree includes the following notice remarks on the abstract of claim 43B 214604-00:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43B TEMPORARY PRELIMINARY DECREE ISSUED 01/16/1985.

CLAIM FILED LATE 09/29/1994 . IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE

LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

The Preliminary Decree includes the same first three notice remarks on the abstract of claim 43B 214620-00. These remarks do not raise unresolved issues which need to be addressed. These remarks should be removed as having served their notice purposes.

CONCLUSION OF LAW

The information provided by the DNRC Memorandum is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. 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

Service Via USPS Mail:

Brad Greenwood
Lorraine Greenwood
212 Pine Creek Rd
Livingston, MT 59047-9120

MJP Anderson Trust
2471 East River Rd
Livingston, MT 59047
760-845-3958 H
matt@11loud.com

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

Water Right Number: **43B 214604-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners:
BRAD GREENWOOD
212 PINE CREEK RD
LIVINGSTON, MT 59047 9120

LORRAINE GREENWOOD
212 PINE CREEK RD
LIVINGSTON, MT 59047 9120

MJP ANDERSON TRUST
2471 EAST RIVER RD
LIVINGSTON, MT 59047

Priority Date: NOVEMBER 1, 1910

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 09/29/1994 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 1.15 CFS

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

Climatic Area: 3 - MODERATE

Maximum Acres: 5.01

***Source Name:** PINE 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		NENWSW	12	4S	9E	PARK

Period of Diversion: APRIL 1 TO NOVEMBER 30

Diversion Means: DIVERSION DAM

Period of Use: APRIL 1 TO NOVEMBER 30

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	5.00		SENE	11	4S	9E	PARK

2 0.01 SWSWNW 12 4S 9E PARK
Total: 5.01

THE PLACE OF USE INCLUDES CERTIFICATE OF SURVEY NO. 19 , PARK COUNTY.

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

Water Right Number: **43B 214620-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners:
BRAD GREENWOOD
212 PINE CREEK RD
LIVINGSTON, MT 59047 9120

LORRAINE GREENWOOD
212 PINE CREEK RD
LIVINGSTON, MT 59047 9120

MJP ANDERSON TRUST
2471 EAST RIVER RD
LIVINGSTON, MT 59047

Priority Date: APRIL 29, 1972

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 10/24/1994 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 84.15 GPM

THIS RIGHT INCLUDES HIGH OR FLOOD WATERS OF PINE CREEK

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

Climatic Area: 3 - MODERATE

Maximum Acres: 5.01

***Source Name:** PINE CREEK

Source Type: SURFACE WATER

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

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NENWSW	12	4S	9E	PARK

Period of Diversion: APRIL 1 TO JUNE 30

Diversion Means: DIVERSION DAM

Period of Use: APRIL 1 TO JUNE 30

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	5.00		SENE	11	4S	9E	PARK
2	0.01		SWSWNW	12	4S	9E	PARK
Total:	5.01						

THE PLACE OF USE INCLUDES CERTIFICATE OF SURVEY NO. 19 , PARK COUNTY.