

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: Howard Dobbs Laird 2020 Trust; K. Brooke Laird
Living Trust; ~~Danielle M. Salk; Lawrence H. Salk~~ Salk
Family Trust

CASE 43B-0740-R-2022
43B 8481-00

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, 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

Claim 43B 8481-00 appeared in the Preliminary Decree with the following issue remark:

AS REPORTED IN THE JULY 9, 1986 DNRC RE-EXAMINATION REPORT, IT APPEARS THAT THE

PURPOSE SHOULD BE CHANGED TO “COMMERCIAL,” AND THE POINT OF DIVERSION AND MEANS CHANGED TO “NENENW 25 02S 09E PARK PUMP.”

The issue remark was 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.

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. On April 17, 2023 Howard Dobbs Laird 2020 Trust and K. Brooke Laird Living Trust filed their Notice of Filing of Evidence. On July 17, 2023 Howard Dobbs Laird 2020 Trust and K. Brooke Laird Living Trust filed Claimants’ Joint Notice of Filing of Additional Information and Clarification. On August 16, 2023 Danielle M. Salk and Lawrence H. Salk filed their Response To Order Setting Show Cause. The settlement includes a request to change the place of use legal description. This is a motion to amend filed pursuant to section 85-2-233(6), MCA. These documents are viewable in the Court’s FullCourt Enterprise case management system.

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.

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.

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. The Preliminary Decree states that the purpose is MINING. The purpose should be COMMERCIAL.

2. The Preliminary Decree states that the volume is 607.54 AC-FT and includes the following clarification remark: THIS USE MAY CONSUME SOME WATER, BUT UNTIL THAT AMOUNT IS QUANTIFIED, IT IS PRESUMED THAT THE USE IS NON-CONSUMPTIVE. The volume quantification and the remark should be removed. The following remark should be added: PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.

3. The Preliminary Decree states that the means of diversion is MULTIPLE. The means of diversion should be HEADGATE. The claimants confirmed the point of diversion legal description is correct and should not be changed as noted in the issue remark. The point of diversion and means of diversion issue remark should be removed as addressed and resolved.

In addition, the following two reservoirs should be added to the point of diversion:

Reservoir: OFFSTREAM Reservoir Name: RESERVOIR #1 (Upper)
GOV'T LOT 4, NENW section 25, T2S, R9E, PARK
Dam Height: 5.00 FEET
Depth: 12.00 FEET
Surface Area: 1.00 ACRES
Capacity: 8.00 ACRE-FEET

Reservoir: OFFSTREAM Reservoir Name: RESERVOIR #2 (Lower)
GOV'T LOT 4, NENW section 25, T2S, R9E, PARK
Dam Height: 3.00 FEET
Depth: 5.00 FEET
Surface Area: 0.50 ACRES
Capacity: 0.75 ACRE-FEET

4. 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.

5. The Preliminary Decree states that the legal description for place of use parcel number 2 is GOV'T LOT 5, NENW section 25, T2S, R9E, PARK. The legal description should be GOV'T LOT 5, S2NW section 25, T2S, R9E, PARK.

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 documents filed by the claimants are sufficient to contradict and overcome the prima facie claim as it appeared in the Preliminary Decree and sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court grant the motion to amend this claim and 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 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:

Last Order:

Danielle M. Salk
Lawrence H. Salk
111 Gregory Dr
Fairfax, CA 94930

**Salk Family Trust
111 Gregory Dr
Fairfax, CA 94930**

Service Via Electronic Mail:

Benjamin S. Sudduth
Sudduth Law, PLLC
1050 East Main Street, Suite 3B
PO Box 507
Bozeman, MT 59771-0507
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Note: Caption and Service List Updated 10-3-23

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

Water Right Number: 43B 8481-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LAIRD, HOWARD DOBBS 2020 TRUST
119 N 3RD ST
LIVINGSTON, MT 59047 2605

LAIRD, K BROOKE LIVING TRUST
119 N 3RD ST
LIVINGSTON, MT 59047 2605

SALK FAMILY TRUST
111 GREGORY DR
FAIRFAX, CA 94930

***Priority Date:** DECEMBER 31, 1945

Type of Historical Right: FILED

Purpose (use): COMMERCIAL

Flow Rate: 2.23 CFS

Volume: PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.

Source Name: YELLOWSTONE 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	5	SESWNW	25	2S	9E	PARK

Period of Diversion: APRIL 1 TO DECEMBER 31

Diversion Means: HEADGATE

Reservoir: OFFSTREAM **Reservoir Name:** RESERVOIR #1 (UPPER)

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
4	NENW	25	2S	9E	PARK

Dam Height: 5.00 FEET

Depth: 12.00 FEET

Surface Area: 1.00 ACRES

Capacity: 8.00 ACRE-FEET

Reservoir:	OFFSTREAM	Reservoir Name: RESERVOIR #2 (LOWER)					
	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
	4	NENW	25	2S	9E	PARK	
Dam Height:	3.00 FEET						
Depth:	5.00 FEET						
Surface Area:	0.50 ACRES						
Capacity:	0.75 ACRE-FEET						

Period of Use: APRIL 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		4	NENW	25	2S	9E	PARK
2		5	S2NW	25	2S	9E	PARK