

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: Stermitz Ranch LLC

CASE 43B-0825-R-2022
43B 3969-00
43B 30160044

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

This claim appeared in the Preliminary Decree with the following issue remark:

THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

The issue remark was not addressed and resolved 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 claimant an opportunity to file additional information or evidence. On March 28, 2023 the claimant filed its Response To Order Setting Filing Deadline including a Verified Motion To Amend which requests the addition of Cottonwood Creek and Cinnabar Creek and their points of diversion and places of use to claim 43B 3969-00. On July 5, 2023 the claimant filed its Second Response To Order Setting Filing Deadline. The content requests various amendments to the source name, point of diversion, and place of use, followed by generation of implied claims. This is a motion to amend filed pursuant to section 85-2-233(6), MCA [“July 5, 2023 motion to amend”]. As the July 5, 2023 motion to amend includes more detail and the argument for generating implied claims, this is the settlement document upon which this Master’s Report is based. These documents are 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.

From Case 41P-108, *Circle S Ranch, Inc.*, Order On Motion To Modify Claims 5-16-19, at 2019 Mont. Water LEXIS 8, page 5.

The Water Court recognizes implied claims in certain circumstances *In re Musselshell River below Roundup*, Case 40C-47, 1994 Mont. Water LEXIS 18, *78

(July 14, 1994). However, before the Court will recognize an implied claim, the claimant must prove that several factors exist. These include: (1) proof of two or more water rights in the original claim form or the material submitted with the claim form; (2) proof of historic use corroborating the implied claim; and (3) proof that recognizing the implied claim(s) will avoid causing a change to historic water use or increase the historic burden to other water users. *In re Foss*, Case 76HF-580, 2013 Mont. Water LEXIS 17, *32 (Jan. 31, 2013); *In re Martinell*, Case 41A-148, 2018 Mont. Water LEXIS 3, *6 (June 14, 2018). These standards assure that implied claims are not used to revive a claim that was forfeited as a matter of law by missing the filing deadline. Mont. Code Ann. § 85-2-226 (establishing conclusive presumption of abandonment of (*sic*) for claims not timely filed); *In re Climbing Arrow Ranch*, Case 41F-A19, 2019 Mont. Water LEXIS 1 (Mar. 6, 2019). **The implied claim process also cannot be used to expand the elements of a statement of claim.** *In re Eliasson Ranch Company*, Order Amending and Adopting Master’s Report, Case 40A-115, 2004 Mont. Water LEXIS 2, *6 (Jun. 28, 2004) (“*Eliasson*”).

Emphasis added.

In re Eliasson Ranch Company, Order Amending and Adopting Master’s Report, Case 40A-115, 2004 Mont. Water LEXIS 2, *6 (Jun. 28, 2004) (“*Eliasson*”), referenced above, held that a claim cannot be amended in order to create the predicate for generating an implied claim.

The paragraph referenced above from the *Eliasson* decision states in full:

The generation of implied claims must come from the statement of claim as it was originally filed on or before the filing deadline of April 30, 1982. **A statement of claim cannot be amended after the filing deadline or changed through the objection process to expand the elements of the filed statement of claim and thereby create the groundwork to add additional water rights through the implied claim process.** The implied claim process cannot be used to circumvent the claim filing process in order to cure a failure to file a water right claim in a timely fashion. That practice would be contrary to the late claim provisions in the statutes. Section 85-2-221 and 85-2-225, MCA. *Adjudication of Water Rights of Yellowstone River* (1992), 253 Mont. 167, 832 P.2d, 1210.

Emphasis added.

Judicial notice is taken of the Water Resources Survey for Park County (1951). Rule 201, M.R.Evid.

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 amending their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT and CONCLUSIONS OF LAW

CONCLUSION OF LAW 1) Statement of Claim 43B 3969-00 was properly filed and is prima facie proof of its content. Section 85-2-227, MCA.

FINDING OF FACT 1) Statement of Claim 43B 3969-00 is for livestock drinking direct from source. The Statement of Claim states that the source is Dixon Creek and that the points of diversion for the livestock watering are the SE of section 21, the E2SW of section 21, and the N2NW of section 27, all in T8S, R7W. The marked topographic map copy attached to Statement of Claim has a pencil notation in the margin -“Instream, Dixon Creek” - and a bold black marking tracing the stream course with the notation added “Location Of In-Stream Stock Watering”. Bold black marking is in the S2 of section 21, down into the far NE corner of section 28, then into the NW of section 27. While this marking appears as a continuous stretch of stream, a comparison to the Park County Water Resources Survey map for T8S, R7E (1951) and the aerial photograph with the different stream courses identified (attached to the Verified Motion To Amend filed on March 28, 2023), shows that the initial marked stream course is Dixon Creek in section 21, but that Dixon Creek flows into Cottonwood Creek in the SESE of section 21. The marked point of diversion/stream location above where the Creeks join in the SESE of section 21 is Dixon Creek but the marked point of diversion/stream below that location in the SESE of section 21 and into sections 27 and 28, is Cottonwood Creek.

The claimed points of diversion in the E2SW of section 21 and SE of section 21 includes the Dixon Creek course as marked on the topographic map. The claimed points of diversion in the SE of section 21 and N2NW of section 27 includes the Cottonwood Creek course as marked on the topographic map. Although only Dixon Creek is identified as the source on the Statement of Claim, clearly the claimed stock water use is on both Dixon Creek and Cottonwood Creek within the claimed points of diversion and as marked on the attached topographic map copy. Hence, the issue remark stating that there appears to be two sources claimed.

FINDING OF FACT 2) Cinnabar Creek is not identified on the Statement of Claim as a source.

The bold black marking on the topographic map copy does not include Cinnabar Creek.

Cinnabar Creek is included on the topographic map copy attached to the Statement of Claim as are multiple other sources. However, there are no markings or added notations concerning Cinnabar Creek or the multiple other sources included on the topographic map copy. The claimed points of diversion legal descriptions for section 21 do not include Cinnabar Creek. Cinnabar Creek does flow through the N2NW section 27, but the bold black marking on the topographic map clearly excludes any diversion or use of Cinnabar Creek.

CONCLUSION OF LAW 2) Statement of Claim 43B 3969-00 includes prima facie proof of a livestock direct appropriation of water from Dixon Creek, diverted and used in the E2SW of section 21 and SE of section 21, T8S, R7E as marked on the topographic map attached to the Statement of Claim.

CONCLUSION OF LAW 3) Statement of Claim 43B 3969-00 includes prima facie proof of a livestock direct appropriation of water from Cottonwood Creek, diverted and used in the SE of section 21 and the N2NW of section 27, T8S, R7E as marked on the topographic map attached to the Statement of Claim.

CONCLUSION OF LAW 4) Statement of Claim 43B 3969-00 does not include diversion and use of Cinnabar Creek. Therefore, it does not include prima facie proof of a livestock direct appropriation of water from Cinnabar Creek.

FINDING OF FACT 3) The July 5, 2023 motion to amend requests the Court add Cinnabar Creek as a source and add its points of diversion and places of use to claim 43B 3969-00, then generate an implied claim for the Cinnabar Creek appropriation.

CONCLUSION OF LAW 5) Claim 43B 3969-00 cannot be amended to add an unclaimed water right to it. *Circle S Ranch, Inc.*, Order On Motion To Modify Claims, 2019 Mont. Water LEXIS 8, and *In re Eliasson Ranch Company*, Order Amending and Adopting Master's Report, 2004 Mont. Water LEXIS 2. The July 5, 2023 motion to amend should be DENIED IN PART for its request to add the Cinnabar Creek stock appropriation (source and points of diversion) to this claim.

FINDING OF FACT 4) The changes requested in the July 5, 2023 motion to amend concerning the Dixon Creek and Cottonwood Creek point of diversion legal descriptions and place of use

legal descriptions arise out of the same conduct, transaction, or occurrence specified on the original Statement of Claim, are based on the same operative facts specified in the Statement of Claim, and merely make more specific that which was already claimed on the original Statement of Claim.

CONCLUSION OF LAW 6) The requested amendments of the Dixon Creek and Cottonwood Creek point of diversion legal descriptions and place of use legal descriptions do not adversely affect other water rights as they are refinements to the abstract which do not make any changes to the actual historical use of the claimed right on the ground. Notice by publication of these amendments is not required. Section 85-2-233(6), MCA.

CONCLUSION OF LAW 7) Each of the requested amendments of the Dixon Creek and Cottonwood Creek point of diversion legal descriptions and place of use legal descriptions “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

FINDING OF FACT 5) The July 5, 2023 motion to amend requests amendment of the Dixon Creek point of diversion in the E2SW section 21 to:

NWSESW section 21
SWNESW section 21
SENESEW section 21

These are all within the E2SW section 21 as claimed and as appeared in the Preliminary Decree. These are refinements of what was claimed and decreed, not expansions.

FINDING OF FACT 6) The July 5, 2023 motion to amend requests amendment of the Dixon Creek point of diversion in the SE section 21 to:

SWNWSE section 21
SENWSE section 21
SWNESE section 21
NWSESE section 21

These are all within the SE section 21 as claimed and as appeared in the Preliminary Decree. These are refinements of what was claimed and decreed, not expansions.

FINDING OF FACT 7) The July 5, 2023 motion to amend requests amendment of the Cottonwood Creek point of diversion in the E2SW section 21 to:

NENESW section 21

This is within the E2SW section 21 as claimed and as appeared in the Preliminary Decree. This is a refinement of what was claimed and decreed, not an expansion.

FINDING OF FACT 8) The July 5, 2023 motion to amend requests amendment of the Cottonwood Creek point of diversion in the SE section 21 to:

NWNWSE section 21
NENWSE section 21
SENWSE section 21
NWNENE section 21
SWNESE section 21
NWSESE section 21
~~SWNESE section 21~~ (listed twice)
~~NWSESE section 21~~ (listed twice)
NESESE section 21
SESESE section 21

These are all within the SE of section 21 as claimed and as appeared in the Preliminary Decree.

These are refinements of what was claimed and decreed, not expansions.

FINDING OF FACT 9) The July 5, 2023 motion to amend requests amendment of the Cottonwood Creek point of diversion in the N2NW section 27 to:

NWNWNW section 27
NENWNW section 27
NWNENW section 27
SWNENW section 27

These are all within the N2NW section 27 as claimed and as appeared in the Preliminary Decree. These are refinements of what was claimed and decreed, not expansions.

CONCLUSION OF LAW 8) The July 5, 2023 motion to amend should be GRANTED IN PART for its request to refine the claimed point of diversion and place of use legal descriptions.

FINDING OF FACT 10) The composite of these refined Dixon Creek and Cottonwood Creek point of diversion legal descriptions falling within the claimed and decreed point of diversion is:

NWSESW section 21, T8S, R7E, PARK	Dixon Creek
SWNESW section 21, T8S, R7E, PARK	Dixon Creek
SENESW section 21, T8S, R7E, PARK	Dixon Creek
SWNWSE section 21, T8S, R7E, PARK	Dixon Creek
SENWSE section 21, T8S, R7E, PARK	Dixon Creek

SWNESE section 21, T8S, R7E, PARK	Dixon Creek
NWSESE section 21, T8S, R7E, PARK	Dixon Creek
NENESW section 21, T8S, R7E, PARK	Cottonwood Creek
NWNWSE section 21, T8S, R7E, PARK	Cottonwood Creek
NENWSE section 21, T8S, R7E, PARK	Cottonwood Creek
SEWSE section 21, T8S, R7E, PARK	Cottonwood Creek
NWNESE section 21, T8S, R7E, PARK	Cottonwood Creek
SWNESE section 21, T8S, R7E, PARK	Cottonwood Creek
NWSESE section 21, T8S, R7E, PARK	Cottonwood Creek
NESESE section 21, T8S, R7E, PARK	Cottonwood Creek
SESESE section 21, T8S, R7E, PARK	Cottonwood Creek
NWNWNW section 27, T8S, R7E, PARK	Cottonwood Creek
NENWNW section 27, T8S, R7E, PARK	Cottonwood Creek
NWNENW section 27, T8S, R7E, PARK	Cottonwood Creek
SWNENW section 27, T8S, R7E, PARK	Cottonwood Creek

FINDING OF FACT 11) The Preliminary Decree states that the place of use is section 21 and section 27, T8N, R7E, PARK. For livestock direct from source claims, the point of diversion and place of use legal descriptions should be the same. All of the requested legal description refinements for the point of diversion also fall within the claimed and decreed place of use legal descriptions. The refined place of use legal descriptions are refinements, not expansions.

FINDING OF FACT 12) The composite of these refined Dixon Creek and Cottonwood Creek place of use legal descriptions falling within the claimed and decreed place of use is:

- NWSESW section 21, T8S, R7E, PARK
- SWNESW section 21, T8S, R7E, PARK
- SENESW section 21, T8S, R7E, PARK
- SWNWSE section 21, T8S, R7E, PARK
- SEWSE section 21, T8S, R7E, PARK
- SWNESE section 21, T8S, R7E, PARK
- NWSESE section 21, T8S, R7E, PARK
- NENESW section 21, T8S, R7E, PARK
- NWNWSE section 21, T8S, R7E, PARK
- NENWSE section 21, T8S, R7E, PARK
- SEWSE section 21, T8S, R7E, PARK
- NWNESE section 21, T8S, R7E, PARK
- SWNESE section 21, T8S, R7E, PARK
- NWSESE section 21, T8S, R7E, PARK
- NESESE section 21, T8S, R7E, PARK
- SESESE section 21, T8S, R7E, PARK
- NWNWNW section 27, T8S, R7E, PARK

NENWNW section 27, T8S, R7E, PARK
NWNENW section 27, T8S, R7E, PARK
SWNENW section 27, T8S, R7E, PARK

FINDING OF FACT 13) Statement of Claim 43B 3969-00 itself is proof of historical use corroborating the implied claim.

FINDING OF FACT 14) The July 3, 2023 Declaration of Lorayne Stermitz is attached to the July 5, 2023 motion to amend. She states that she has lived on the ranch since 1962, that she filed the Statement of Claim, and that stock watered on the sources from prior to July 1, 1973 to the present day - providing proof that the implied claim will not cause a change to historical water use or increase the historical burden to other water users.

CONCLUSION OF LAW 9) The requirements for generating an implied as specified in Case 41P-108 "Circle S Ranch, Inc." ORDER ON MOTION TO MODIFY CLAIMS 5-16-19, at 2019 Mont. Water LEXIS 8, page 5, have been met.

CONCLUSION OF LAW 10) The settlement documentation and supporting evidence entered into the record are sufficient to contradict and overcome the prima facie claim.

FINDING OF FACT 15) Claim 43B 3969-00 should be used for the Dixon Creek appropriation. Implied claim 43B 30160044 should be generated for the Cottonwood Creek appropriation.

FINDING OF FACT 16) For claim 43B 3969-00, the Preliminary Decree states that the point of diversion legal descriptions are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
SE	21	8S	7E	PARK
E2SW	21	8S	7E	PARK
N2NW	27	8S	7E	PARK

The point of diversion legal descriptions should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NWSESW	21	8S	7E	PARK
SWNESW	21	8S	7E	PARK
SENESE	21	8S	7E	PARK
SWNWSE	21	8S	7E	PARK
SENESE	21	8S	7E	PARK
SWNESE	21	8S	7E	PARK
NWSESE	21	8S	7E	PARK

The Preliminary Decree states that the place of use is:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	21	8S	7E	PARK
	27	8S	7E	PARK

The place of use should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NWSESW	21	8S	7E	PARK
SWNESW	21	8S	7E	PARK
SENESE	21	8S	7E	PARK
SWNWSE	21	8S	7E	PARK
SENESE	21	8S	7E	PARK
SWNESE	21	8S	7E	PARK
NWSESE	21	8S	7E	PARK

The issue remark stating that the claim appears to include two sources should be removed as addressed and resolved.

FINDING OF FACT 17) For implied claim 43B 30160044, the elements should be the same as 43B 3939-00 except the source name, point of diversion legal descriptions, and place of use legal descriptions.

The source name should be Cottonwood Creek.

The point of diversion legal descriptions should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NENESW	21	8S	7E	PARK
NWNWSE	21	8S	7E	PARK
NENWSE	21	8S	7E	PARK
SENESE	21	8S	7E	PARK
NWNESE	21	8S	7E	PARK
SWNESE	21	8S	7E	PARK
NWSESE	21	8S	7E	PARK
SWNESE	21	8S	7E	PARK
NESESE	21	8S	7E	PARK
SESESE	21	8S	7E	PARK
NWNWNW	27	8S	7E	PARK
NENWNW	27	8S	7E	PARK
NWNENW	27	8S	7E	PARK
SWNENW	27	8S	7E	PARK

The place of use legal descriptions should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NENESW	21	8S	7E	PARK
NWNWSE	21	8S	7E	PARK
NENWSE	21	8S	7E	PARK
SENWSE	21	8S	7E	PARK
NWNESE	21	8S	7E	PARK
SWNESE	21	8S	7E	PARK
NWSESE	21	8S	7E	PARK
SWNESE	21	8S	7E	PARK
NESESE	21	8S	7E	PARK
SESESE	21	8S	7E	PARK
NWNWNW	27	8S	7E	PARK
NENWNW	27	8S	7E	PARK
NWNENW	27	8S	7E	PARK
SWNENW	27	8S	7E	PARK

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court deny in part and grant in part the July 5, 2023 motion to amend, and make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin and generate implied claim 43B 30160044. 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 Electronic Mail:

Christopher T. Scoones
 Scoones Law PLLC
 PO Box 4570
 Bozeman, MT 59772
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 chris@scooneslaw.com

Note: Caption Updated 9-19-23

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

Water Right Number: 43B 3969-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: STERMITZ RANCH LLC
488 CINNABAR BASIN RD
GARDINER, MT 59030 9319

Priority Date: DECEMBER 31, 1900

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: DIXON 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		NWSESW	21	8S	7E	PARK
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		SWNESW	21	8S	7E	PARK
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		SENESE	21	8S	7E	PARK
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		SWNWSE	21	8S	7E	PARK
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		SENWSE	21	8S	7E	PARK
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
6		SWNESE	21	8S	7E	PARK
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

7 NWSESE 21 8S 7E PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 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			NWSESW	21	8S	7E	PARK
2			SWNESW	21	8S	7E	PARK
3			SENESE	21	8S	7E	PARK
4			SWNWSE	21	8S	7E	PARK
5			SENESE	21	8S	7E	PARK
6			SWNESE	21	8S	7E	PARK
7			NWSESE	21	8S	7E	PARK

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

Water Right Number: 43B 30160044 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: STERMITZ JAMES E & LORAYNE LIVING TRUST
%STERMITZ JAMES E & LORAYNE TRUSTEES
488 CINNABAR BASIN RD
GARDINER, MT 59030 9313

STERMITZ RANCH LLC
488 CINNABAR BASIN RD
GARDINER, MT 59030 9319

Priority Date: DECEMBER 31, 1900

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: COTTONWOOD 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		NENSW	21	8S	7E	PARK
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		NWNWSE	21	8S	7E	PARK
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		NENWSE	21	8S	7E	PARK
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		SENWSE	21	8S	7E	PARK
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		NWNESE	21	8S	7E	PARK
Period of Diversion:	JANUARY 1 TO DECEMBER 31					

Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 6 SWNESE 21 8S 7E PARK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 7 NWSESE 21 8S 7E PARK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 8 SWNESE 21 8S 7E PARK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 9 NESESE 21 8S 7E PARK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 10 SESESE 21 8S 7E PARK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 11 NWNWNW 27 8S 7E PARK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 12 NENWNW 27 8S 7E PARK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 13 NWNENW 27 8S 7E PARK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 14 SWNENW 27 8S 7E PARK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N	21	8S	7E	PARK
2			N	21	8S	7E	PARK
3			N	21	8S	7E	PARK
4			S	21	8S	7E	PARK
5			N	21	8S	7E	PARK
6			S	21	8S	7E	PARK
7			N	21	8S	7E	PARK
8			S	21	8S	7E	PARK
9			N	21	8S	7E	PARK
10			S	21	8S	7E	PARK
11			N	27	8S	7E	PARK
12			N	27	8S	7E	PARK
13			N	27	8S	7E	PARK

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SWNENW 27 8S 7E PARK