

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
1-800-624-3270  
(406) 586-4364  
watercourt@mt.gov

**FILED**  
10/06/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
43E-0118-I-2023  
White, Eugene  
6.00

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
PRYOR CREEK (BASIN 43E)  
INTERLOCUTORY DECREE

\*\*\*\*\*

CLAIMANT: John P. Tillett

OBJECTOR: USA (Dept. of Interior Bureau of Indian  
Affairs)

**CASE 43E-0118-I-2023**

43E 30145149

43E 30145151

**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**

All water right claims that appeared in the Interlocutory Decree for Pryor Creek (Basin 43E) were subject to "issue remarks" resulting from pre-decree examination by

the DNRC, objections, and counterobjections. Each of the above-captioned claims received objections from the United States Department of Interior Bureau of Indian Affairs (“BIA”) as well as issue remarks during the DNRC’s claims reexamination.

The claims were consolidated into Case 43E-0118-I-2023 to resolve the objections and issue remarks.

### FINDINGS OF FACT

1. Claim 43E 30145149 received the following issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43E DECREE ISSUED 02/25/2010.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 06/28/2019, THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY JOHN PAUL TILLET.

CLAM FORM SIGNED BY OTHER THAN CLAIMANT.

- Claim 43E 30145151 received the following issue remarks:

CLAIM FORM SIGNED BY OTHER THAN CLAIMANT.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 06/28/2019, THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY LORETTA L AND JOHN PAUL TILLET.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43E DECREE ISSUED 02/25/2010.

2. On June 2, 2023, claimant John P. Tillett and objector BIA filed a *Stipulation* proposing modifications as follows:

(1) The Interlocutory Decrees for Exempt Claims 43E 30145149 and 43E 30145151, should be modified as follows:

Priority Date MAY 22, 1868

Type of Historical Right: RESERVED

THIS WATER RIGHT IS A WALTON RIGHT.

THIS WATER RIGHT IS NOT PART OF THE TRIBAL  
WATER RIGHT AS DEFINED IN THE CROW  
COMPACT.

(2) Upon entry of the Interlocutory Decree reflecting the above modifications to the claims in this case, the objections of the BIA shall be deemed resolved.

#### PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.
2. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

#### CONCLUSIONS OF LAW

1. Based on the information received in the *Stipulation*, claims 43E 30145149 and 43E 30145515 should be modified by changing the priority date to May 22, 1868, the type of historical right modified to “reserved,” and the Walton right language as listed in Finding of Fact No. 3 should be added to both claims. These modifications resolve the objections and ownership issue remarks. The issue remarks should be removed from the claims.
2. The notice-type issue remarks appearing on each claim served their notice purpose and should be removed from the claims.

#### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that each claim be modified to a priority date of May 22, 1868, the type of right modified to “reserved,” the Walton right information remarks added as listed in Finding of Fact No. 3, and the issue remarks removed from the claims.

Post decree abstracts of each water right claim reflecting the recommended changes are attached to this Report.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via Electronic Mail:**

David W Harder  
US DOJ-ENRD-IRS  
999 18<sup>TH</sup> St South, Terrace Suite 370  
Denver, CO 80202  
David.Harder@usdoj.gov  
Efile\_Denver.enrd@usdoj.gov

**Service via USPS Mail:**

John P. Tillett  
P.O. Box 194  
Lovell, WY 82431-0194

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**PRYOR CREEK**  
**BASIN 43E**

**Water Right Number:** 43E 30145149 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** JOHN P TILLET  
PO BOX 194  
LOVELL, WY 82431 0194

**Priority Date:** MAY 22, 1868

**Type of Historical Right:** RESERVED

THIS WATER RIGHT IS A WALTON RIGHT.

THIS WATER RIGHT IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE COMPACT.

**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:** SHIVELY CREEK

**Source Type:** SURFACE WATER

**Source Name:** UNNAMED TRIBUTARY OF SHIVELY CREEK

**Source Type:** SURFACE WATER

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

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2	10	6S	27E	BIG HORN

**Source Name:** SHIVELY CREEK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		SE	10	6S	27E	BIG HORN
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**Source Name:** UNNAMED TRIBUTARY OF SHIVELY CREEK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

3		W2W2SE	10	6S	27E	BIG HORN
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**Source Name:** UNNAMED TRIBUTARY OF SHIVELY CREEK

**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			S2	10	6S	27E	BIG HORN
2			SE	10	6S	27E	BIG HORN
3			W2W2SE	10	6S	27E	BIG HORN

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**Remarks:**

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE CROW INDIAN RESERVATION.

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**PRYOR CREEK**  
**BASIN 43E**

**Water Right Number:** 43E 30145151 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** JOHN P TILLET  
PO BOX 194  
LOVELL, WY 82431 0194

**Priority Date:** MAY 22, 1868

**Type of Historical Right:** RESERVED

THIS WATER RIGHT IS A WALTON RIGHT.

THIS WATER RIGHT IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE COMPACT.

**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:** EAST PRYOR CREEK

**Source Type:** SURFACE WATER

**Source Name:** UNNAMED TRIBUTARY OF EAST PRYOR 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		SESENE	23	6S	27E	BIG HORN
<b>Source Name:</b> EAST PRYOR CREEK						
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
2		S2	23	6S	27E	BIG HORN
<b>Source Name:</b> EAST PRYOR CREEK						
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
3		SWNWSE	23	6S	27E	BIG HORN
<b>Source Name:</b> UNNAMED TRIBUTARY OF EAST PRYOR CREEK						
<b>Period of Diversion:</b> JANUARY 1 TO DECEMBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
4		E2NE	24	6S	27E	BIG HORN

**Source Name:** UNNAMED TRIBUTARY OF EAST PRYOR CREEK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

5 W2NW 24 6S 27E BIG HORN

**Source Name:** EAST PRYOR CREEK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

6 NWNW 24 6S 27E BIG HORN

**Source Name:** UNNAMED TRIBUTARY OF EAST PRYOR CREEK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

7 E2SW 24 6S 27E BIG HORN

**Source Name:** UNNAMED TRIBUTARY OF EAST PRYOR CREEK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

8 S2S2 26 6S 27E BIG HORN

**Source Name:** UNNAMED TRIBUTARY OF EAST PRYOR CREEK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

9 W2 26 6S 27E BIG HORN

**Source Name:** EAST PRYOR CREEK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

10 NWNWNW 36 6S 27E BIG HORN

**Source Name:** UNNAMED TRIBUTARY OF EAST PRYOR CREEK

**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			SESENE	23	6S	27E	BIG HORN
2			S2	23	6S	27E	BIG HORN
3			SWNWSE	23	6S	27E	BIG HORN
4			E2NE	24	6S	27E	BIG HORN
5			W2NW	24	6S	27E	BIG HORN
6			NWNW	24	6S	27E	BIG HORN
7			E2SW	24	6S	27E	BIG HORN
8			S2S2	26	6S	27E	BIG HORN
9			W2	26	6S	27E	BIG HORN
10			NWNWNW	36	6S	27E	BIG HORN

**Remarks:**

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE CROW INDIAN RESERVATION.