

Montana Water Court
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FILED
12/06/2024
Sara Calkins
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Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43P-0012-I-2024
Reynolds, Brooke
3.00

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
BIGHORN RIVER, BELOW GREYBULL RIVER (43P)
INTERLOCUTORY DECREE

CLAIMANTS: Jennifer D. Baumann; Laramie T. Baumann

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

CASE 43P-0012-I-2024
43P 30145245

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

Claim 43P 30145245 appeared in the Interlocutory Decree for the Big Horn River, Below Greybull River (Basin 43P). The claim received an issue remark questioning the historical type of right from the Montana Department of Natural Resources and Conservation (“DNRC”) and an objection from the United States of America, on behalf of the Department of Interior Bureau of Indian Affairs (“United States”) to the priority date. To address the issue remark and objection, the Water Court consolidated the claim into Water Court Case 43P-0012-I-2024. (Doc.¹ 1.00).

FINDINGS OF FACT

1. Claim 43P 30145245 is a stock right from the Big Horn River.
2. Claimants filed the statement of claim on June 27, 2019. They claimed a priority date of May 7, 1868, the date of the Treaty of Fort Laramie, and the historical type of right as “use.” They also wrote “Walton right” after the claimed priority date.
3. Claimants attached an allotment patent issued to Kills Three Men on May 5, 1925, and a subsequent patent issued to his heirs on September 10, 1969, to the statement of claim.
4. Because the Claimants assert the claim is a *Walton* right, the DNRC added the following issue remark to the claim during its pre-decree examination:

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE.
DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A
RESERVED RIGHT.
5. The United States objected to the claim asserting that as a *Walton* right, the historical type of right of the claim should be “reserved” and the following informational remarks should be added to the claim:

THIS WATER RIGHT IS A WALTON RIGHT.

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

¹ “Doc.” Numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

6. On October 9, 2024, a status conference was held in this case. Claimants did not appear. Attorney David Harder appeared on behalf of the United States. Mr. Harder reiterated the United States' written objection. (Doc. 2.00).

7. The Court set a deadline of November 8, 2024, for Claimants to show cause why the historical type of right should not be "reserved", and the informational remarks should not be added to the claim. The Court stated that "if nothing is filed by the deadline, the Court will presume Claimants agrees with the United States' proposed resolution and will modify the claim accordingly." (Doc. 2.00.)

8. Nothing was filed by the deadline.

9. The Court presumes Claimants agree with the United States' objection and the DNRC's issue remark.

10. The remaining issue remark placed on the claim is for notice purposes only. In the order setting the filing deadline, the Court stated it should be removed at the close of these proceedings.

CONCLUSIONS OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298.

2. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 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. Rule 19, W.R.Adj.R.

3. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

4. A *Walton* right is a reserved water right of a Tribal allottee that has been transferred to non-Indian purchaser. *Colville Confederated Tribes v. Walton*, 647 F.2d 42 (9th Cir. 1981) (“*Walton I*”); *Colville Confederated Tribes v. Walton*, 752 F.2d 397 (9th Cir. 1985) (“*Walton II*”).

5. The evidence filed with the statement of claim for claim 43P 30145245 indicates the claim is a *Walton* right. The accurate historical type of right is “reserved” for a *Walton* right. The following informational remarks also more accurately describe the nature of the water right:

THIS WATER RIGHT IS A WALTON RIGHT.

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

6. Claimants did not respond to the Court’s deadlines. The Court therefore presumes Claimants agree the historical type of right should be “reserved” and the informational remarks should be added to the claim.

7. The notice-type issue remark placed on the claim has served its purpose and should be removed.

RECOMMENDATIONS

Based upon the Findings of Fact and Conclusions of Law, this Master recommends the Court make the change specified above.

A Post Decree Abstract of Water Right Claim 43P 30145245 is served with this Master’s Report to confirm the recommendations have been made in the DNRC’s water right database.

ELECTRONICALLY SIGNED AND DATED BELOW.

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIGHORN RIVER, BELOW GREYBULL RIVER
BASIN 43P

Water Right Number: 43P 30145245 RESERVED CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: JENNIFER D BAUMANN
PO BOX 327
HARDIN, MT 59034-0327

LARAMIE T BAUMANN
PO BOX 327
HARDIN, MT 59034-0327

Priority Date: MAY 7, 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.

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 STOCKWATERING 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: BIGHORN 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	1	NE	15	2S	33E	BIG HORN

Period of Diversion: NOVEMBER 1 TO MAY 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2	2	NE	15	2S	33E	BIG HORN
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Period of Diversion: NOVEMBER 1 TO MAY 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: NOVEMBER 1 TO MAY 1

***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		1	NE	15	2S	33E	BIG HORN
2		2	NE	15	2S	33E	BIG HORN

Remarks:

POINT OF DIVERSION AND PLACE OF USE ARE LOCATED IN CERTIFICATE OF SURVEY NO. 562.

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