

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

**FILED**  
07/09/2024  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
43QJ-6003-A-2024  
Lambert, Kathryn  
4.00

IN THE WATER COURT OF HE STATE OF MONTANA  
YELLOWSTONE RIVER DIVISION  
YELLOWSTONE RIVER FROM BRIDGER CREEK TO THE  
CLARKS FORK OF THE YELLOWSTONE

\*\*\*\*\*

CLAIMANT: Angela R. Peterson; David P. Peterson; Jerry L.  
Peterson; Rosalie N. Peterson

**CASE 43QJ-6003-A-2024**  
43QJ 215813-00

**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**

On April 29, 2024 David P. Peterson, Rosalie N. Peterson, Jerry L. Peterson, and Angela R. Peterson filed a Verified Motion To Amend Water Right Claim. As the second Preliminary Decree for Basin 43QJ was set to be issued soon, the Court issued an Order Staying Proceedings on May 22, 2024 stating that proceedings are stayed until after issuance of the second

Preliminary Decree. On July 5, 2024 the Order Lifting Stay was issued as work on that second Preliminary Decree was still ongoing. The Motion to Amend is 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.

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

#### FINDINGS OF FACT

1. The changes requested in the motion to amend 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.

2. The point of diversion and place of use each include the S2SWSW section 22, T2S, R18E, STILLWATER and the S2SESW section 22, T2S, R18E, STILLWATER. The S2SESW section 22, T2S, R18E, STILLWATER should be removed from the point of diversion and place of use.

3. The abstract currently includes the following remarks:

AN AMENDMENT WAS SUBMITTED ON 04/29/2024 REQUESTING TO AMEND THE POINT OF DIVERSION AND PLACE OF USE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

POINT OF DIVERSION ID#2 APPEARS TO BE REDUNDANT OF CLAIM NO. 43QJ 215814-00. IT APPEARS THE POINT OF DIVERSION SHOULD ONLY BE FOR THE S2SWSW SEC 22 ON THIS CLAIM.

PLACE OF USE ID#2 APPEARS TO BE REDUNDANT OF CLAIM NO. 43QJ 215814-00. IT APPEARS THE PLACE OF USE SHOULD ONLY BE FOR THE S2SWSW SEC 22 ON THIS CLAIM.

These remarks should be removed as no longer relevant.

#### 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 motion to amend is sufficient to contradict and overcome the prima facie claim.

#### RECOMMENDATIONS

Based upon the above, this Master recommends that the Court grant the Verified Motion to Amend Water Right Claim and make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. The 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**

Angela R Peterson

Jerry L Peterson

1285 Countryman Creek Rd

Reed Point, MT 59069

Rosalie N Peterson

David P Peterson

1235 Countryman Creek Rd

Reed Point, MT 59069

**WATER COURT  
ABSTRACT OF WATER RIGHT CLAIM**

**YELLOWSTONE RIVER, FROM BRIDGER CREEK TO CLARKS FORK YELLOWSTONE  
BASIN 43QJ**

**Water Right Number:** 43QJ 215813-00 STATEMENT OF CLAIM

**Version:** 4 -- SPLIT

**Status:**

**Owners:** ANGELA R PETERSON  
1285 COUNTRYMAN CREEK RD  
REED POINT, MT 59069-7904

DAVID P PETERSON  
1235 COUNTRYMAN CREEK RD  
REED POINT, MT 59069-7904

JERRY L PETERSON  
1285 COUNTRYMAN CREEK RD  
REED POINT, MT 59069-7904

ROSALIE N PETERSON  
1235 COUNTRYMAN CREEK RD  
REED POINT, MT 59069-7904

**\*Priority Date:** DECEMBER 31, 1882

**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 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** COUNTRYMAN 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		S2SWSW	22	2S	18E	STILLWATER

**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			S2SWSW	22	2S	18E	STILLWATER

**Remarks:**

SPLIT CLAIM NO. 43QJ 30158121 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

POINT OF DIVERSION AND PLACE OF USE ID#1 ARE LOCATED IN TRACT 1 OF CERTIFICATE OF SURVEY NO. 304871, STILLWATER COUNTY.

CLAIM FILED 06/25/1996 . THIS IS AN EXEMPT RIGHT VOLUNTARILY FILED UNDER SECTION 85-2-222, MCA.

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

**THE FOLLOWING POTENTIAL ISSUES WERE IDENTIFIED DURING CLAIMS EXAMINATION OR DURING PREVIOUS WATER COURT PROCEEDINGS.**

THIS CLAIM WAS NOT INCLUDED IN THE BASIN 43QJ DECREE ISSUED 07/23/1985.