

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

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
LITTLE BIGHORN RIVER - BASIN 43O
INTERLOCUTORY DECREE

CLAIMANT: Wyola Investments, LLC

CASE 43O-0018-I-2024
43O 30116102

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 43O 30116102 appeared in the Interlocutory Decree for the Little Bighorn River (Basin 43O) with Montana Department of Natural Resources and Conservation (“DNRC”) issue remarks. The claim did not receive any objections, counterobjections, or notices of intent to appear. Wyola Investments, LLC owns the claim. The claim was consolidated into Water Court Case 43O-0018-I-2024 to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 43O 30116102 is a domestic groundwater claim from a well.
2. The claim received the following substantive issue remark:
NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS 3.5 ACRES-FEET PER YEAR.
3. Claimant failed to claim a quantified volume for the water right on the statement of claim filed with the DNRC on December 11, 2017.
4. The volume guideline for a domestic water right claim is $(1.5 \text{ acre-feet} \times \text{Households}) + (2.5 \text{ acre-feet} \times \text{Acres}) = \text{Volume (acre-feet)}$. Rule 19(b)(2), W.R.C.E.R.
5. Claimant claimed 1 household and 0.80 acres of irrigated lawn and garden. Based on this formula, the DNRC determined the volume should be 3.5 acre-feet.
6. The Court set a filing deadline for Claimant to provide evidence supporting a volume of the claim.
7. In the order setting a filing deadline, the Court stated that “if nothing is filed by the deadline, the Court will assume the Claimant agrees with the DNRC’s calculation of the volume and will add a volume of 3.5 acre-feet to the claim.”
8. Claimant did not file a response. The Court assumes it agrees with the DNRC’s calculation for the volume.
9. 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. 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.

2. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v. Burkhartsmeier et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master’s Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as “a relatively modest standard that the statutory criteria are ‘more probable than not’ to have been met.” *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

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. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

5. The volume guideline for this domestic groundwater claim is 3.5 acre-feet. Claimant did not provide the Court with a volume that differs from the guidelines. Thus, the claim should reflect a volume of 3.5 acre-feet consistent with the guideline.

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

RECOMMENDATIONS

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

A Post Decree Abstract of Water Right Claim 43O 30116102 is served with this Master's Report to confirm the recommendations have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Wyola Investments, LLC
PO Box 35
Wyola, MT 59089

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
LITTLE BIGHORN RIVER
BASIN 43O**

Water Right Number: 43O 30116102 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: WYOLA INVESTMENTS LLC
28791 HWY 451
PO BOX 35
WYOLA, MT 59089

***Priority Date:** DECEMBER 31, 1954

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 20.00 GPM

Volume: 3.50 AC-FT

***Maximum Acres:** 0.80

Source Name: GROUNDWATER

Source Type: GROUNDWATER

***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		NESWNW	23	8S	35E	BIG HORN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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	0.80		NESWNW	23	8S	35E	BIG HORN

Total: 0.80

Remarks:

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