

Montana Water Court
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FILED
06/23/2025
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CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43O-0004-I-2024
White, Eugene
5.00

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

CLAIMANTS: Diana Busenitz; Reuben Busenitz

OBJECTOR: United States of America (Dept. of
Interior Bureau of Indian Affairs)

CASE 43O-0004-I-2024
43O 30143641

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 30143641 appeared in the 43O Interlocutory Decree with an issue remark and an objection from The United States of America (Bureau of Indian Affairs). The claim was consolidated into Case 43O-0004-I-2024.

FINDINGS OF FACT

1. On April 11, 2025, the Claimant and BIA filed a Stipulation resolving the Objections and the DNRC issue remarks.
2. Claim 43O 30143641 is for livestock drinking directly from the surface water of Reno Creek.
3. The claimed priority date for 43O 30143641 is the date of the Ft. Laramie Treaty between the Crow Tribe and United States.
4. The place of use associated with claim 43O 30143641 left trust between 1996 and 1997 through patent numbers 25-96-0108 and 25-98-0033. The claim has been used continuously for stock watering since that time.
5. The parties stipulate claim 43O 30143641 is a Reserved Walton Right entitled to a May 7, 1868 priority date.
6. The parties stipulate that these changes resolve the objection.
7. Claim 43O 30143641 also received a notice-type issue remark from the DNRC.

CONCLUSIONS OF LAW

1. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. In this instance, the notice-type issue remark appearing on claim 43O 30143641 served its notice purpose and should be removed from the claim.
2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. 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 an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.
3. “State appropriative water rights and Indian reserved water rights differ in origin and definition.” *State ex rel. Greely v. Confederated Salish & Kootenai Tribes*, 219 Mont. 76, 89, 712 P.2d 754, 762 (Mont. 1985). “Indian reserved water rights are

created or recognized by federal treaty, federal statutes or executive order, and are governed by federal law.” *Greely*, 219 Mont. at 89, 712 P.2d at 762. The relevant federal law at issue here is the Crow Tribe-Montana Compact.

4. Consistent with Chief Water Judge Russ McElyea’s Order Rejecting Master’s Report, Order Approving Stipulation, and Order Closing Case in Case 43O-8, filed on January 15, 2015, the claim in this case should be “Reserved” and the following information remarks should be added:

THIS WATER RIGHT IS A WALTON RIGHT.

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

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the issue remark be removed, and the corrections described in the Findings of Fact be applied.

A post decree abstract of the water right is attached to confirm that the above corrections have been made in the state’s water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

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

Water Right Number: 43O 30143641 RESERVED CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: DIANA BUSENITZ
PO BOX 16
BUSBY, MT 59016-0016

REUBEN BUSENITZ
PO BOX 16
BUSBY, MT 59016-0016

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 NORTHERN CHEYENNE COMPACT.

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
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:** UNNAMED TRIBUTARY OF RENO 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		NW	28	4S	37E	BIG HORN

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			NW	28	4S	37E	BIG HORN