

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

**FILED**  
03/11/2025  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
42C-0009-I-2024  
Lambert, Kathryn  
15.00

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
TONGUE RIVER BELOW HANGING WOMAN CREEK - BASIN 42C  
INTERLOCUTORY DECREE

\* \* \* \* \*

CLAIMANT: Circle Bar Cattle Co. LLC

**CASE 42C-0009-I-2024**  
42C 30145041

**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, conclusion 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**

Circle Bar Cattle Company LLC claim 42C 30145041 appeared in the Interlocutory Decree with the following remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 42C DECREE ISSUED 02/28/2008.

AS OF 01/27/2023 , THIS WATER RIGHT APPEARS TO BE OWNED BY CYNTHIA AND HAROLD G GRATWOHL , 1 NEEDLE ROCK RD , ASHLAND, MT 59003 ,.

THIS CLAIM DOES NOT APPEAR TO MEET THE DEFINITION OF AN EXEMPT RIGHT UNDER SECTION 85-2-222(1), MCA.

The first two remarks are notice remarks. The third remark is an issue remark. The issue remark was not addressed through the objection process. The Water Court is required to resolve the issues raised by an issue remark. Section 85-2-248, MCA.

To address the ownership notice remark, the Court held a scheduling conference with the Bill Stevens and Janice Stevens for Circle Bar Cattle Company LLC and Cynthia Gratwohl. As there was some uncertainty about whether the place of use includes Gratwohl property, the Court issued an Order asking DNRC to prepare a quality aerial photograph copy clearly showing Otter Creek, the road, and the fence line to help them determine if the Gratwohls own any portion of the claimed place of use. On December 18, 2024 the DNRC filed a Memorandum with copies of the aerial photographs it prepared. The Memorandum suggested the place of use and point of diversion legal descriptions could be refined for a more precise description of the place of use and point of diversion for this livestock direct from source claim.

The January 17, 2025 Court Minutes and Order Setting Filing Deadline state:

The Court agreed to prepare a DRAFT abstract reflecting the resolution discussed at the scheduling conference. A copy of the DRAFT abstract is attached. As agreed, pursuant to section 85-2-248(3), MCA, it is

ORDERED that the deadline is **January 30, 2025** for Circle Bar Cattle Company LLC and Cynthia Gratwohl to each file a response stating whether the DRAFT abstract resolves their concerns.

On January 28, 2025 Circle Bar Cattle Company LLC filed its response stating it agrees with the draft abstract. Nothing was filed by Cynthia Gratwohl and Harold G. Gratwohl. These documents are viewable in the Court's FullCourt Enterprise case management system.

#### APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), 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 for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

#### FINDINGS OF FACT

1. The first remark provides notice that this claim was not in the 2008 Preliminary Decree issued for this Basin. It does not raise an unresolved issue which needs to be addressed. There are no proceedings required for this remark. The remark should be removed as having served its notice purpose.

2. The second remark concerning possible ownership by Cynthia Gratwohl and Harold G. Gratwohl should also be removed as having served its notice purpose. The legal description refinements recommended by the DNRC Memorandum and the clarification remark suggested by the Court eliminate any uncertainty about whether the place of use includes Gratwohl property.

3. The Interlocutory Decree states that the point of diversion and place of use legal description for this direct from source stockwater claim is the SWNWNE section 30, T6S, R46E, POWDER RIVER. The legal description should be refined to the NWSWNWNE section 30, T6S, R46E, POWDER RIVER. In addition, the following clarification remark should be added to the abstract of this claim:

THIS RIGHT IS DIVERTED AND USED ONLY ON THE CIRCLE BAR PROPERTY AS SHOWN ON THE AERIAL PHOTOGRAPHS ATTACHED TO THE DECEMBER 18, 2024 DNRC MEMORANDUM.

4. This claim is for a livestock direct from source stockwater right. There is nothing on the Interlocutory Decree abstract for this claim which suggests this is not an exempt right. The issue remark questioning whether this claim qualifies as an exempt right is erroneous and should be removed.

#### CONCLUSION OF LAW

The information provided by the DNRC and the claimant is sufficient to contradict and overcome the prima facie claim. The claim itself is sufficient to remove the issue remark as erroneous without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary

Decree for this Basin. A Post Decree 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:**

Circle Bar Cattle Co. LLC  
11 Taylor Creek Rd  
Ashland, MT 59003

*Potential Owners:*  
Cynthia Gratwohl  
Harold G. Gratwohl  
1 Needle Rock Rd  
Ashland, MT 59003

POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
TONGUE RIVER, BELOW HANGING WOMAN CREEK  
BASIN 42C

Water Right Number: 42C 30145041 STATEMENT OF CLAIM  
Version: 2 -- POST DECREE  
Status: ACTIVE

Owners: CIRCLE BAR CATTLE CO LLC  
11 TAYLOR CREEK RD  
ASHLAND, MT 59003

\*Priority Date: DECEMBER 31, 1883

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: OTTER 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		NWSWNWNE	30	6S	46E	POWDER RIVER

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			NWSWNWNE	30	6S	46E	POWDER RIVER

Remarks:  
THIS RIGHT IS DIVERTED AND USED ONLY ON THE CIRCLE BAR CATTLE COMPANY LLC PROPERTY AS SHOWN ON THE AERIAL PHOTOGRAPHS ATTACHED TO THE DECEMBER 18, 2024 DNRC MEMORANDUM.