

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

CLAIMANTS: Kerri Parr; Rodney K. Parr; Chanda Richards

CASE 43O-0022-I-2024

43O 30145577

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

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

Water right claim 43O 30145577 appeared in the Interlocutory Decree for the Little Bighorn River (Basin 43O) with a Montana Department of Natural Resources and Conservation issue remark and an objection from the United States on behalf of the Department of Interior Bureau of Indian Affairs (“United States”), but did not receive counterobjections or notices of intent to appear. To address the issue remark and objection, the Water Court consolidated the claim into Water Court Case 43O-0022-I-2024. (Doc.¹ 1.00).

FINDINGS OF FACT

1. Claim 43O 30145577 is a stockwater right located within the Crow Indian Reservation with a priority date of December 31, 1885, and the historical type of right as “use.”

2. The United States objected to the priority of the claim, asserting that the place of use is located on a tribal allotment that was transferred from tribal status to fee status far after the claimed priority date. The United States asserted the claim is therefore a *Walton* right that should have a priority consistent with the Treaty of Fort Laramie (May 7, 1868) and the historical type of right as “reserved.”

3. On October 21, 2024, a status conference was held. Claimant Rodney K. Parr appeared on behalf of himself and his daughters, Claimants Kerri Parr and Chanda Richards. Attorney David Harder appeared on behalf of the United States. (Doc. 2.00).

4. The Court set a deadline of January 10, 2025, to file settlement documents or a status report. (Doc. 2.00).

5. On January 13, 2025, Claimants and the United States filed a Stipulation. (Doc. 3.00). The parties agree the claim is a *Walton* right and the following elements should be modified to the following:

Priority Date: MAY 7, 1868

Type of Historical Right: RESERVED

THIS WATER RIGHT IS A WALTON RIGHT.

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

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

6. On January 22, 2025, the Court set a deadline for additional evidence to support the Stipulation. (Doc. 4.00). Specifically, evidence to show that the claim is qualified as a Walton right, such as when the claim left trust status.

7. On February 21, 2025, the parties filed a joint response to the Court's order providing additional evidence on when the claim left trust status. (Doc. 5.00). They report that the land was allotted to Star Blackhawk on November 28, 1923, in patent number 924944. The land left trust status in 1991 when two fee patents were issued to Mac Castillo. Claimant Kerri Parr purchased the land from Mac Castillo in 1997.

8. The claim also received the following notice-type issue remark:

CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 430 DECREE ISSUED
03/25/2010.

9. The remark has served its purpose of providing notice.

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. 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. 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. The Water Court is not bound by settlement agreements. Settlement agreements are subject to review and approval of the Water Court. Rule 17, W.R.Adj.R.

5. 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*”).

6. The parties agree the claim is a *Walton* right. The evidence provided in the Stipulation indicates the claim is indeed a *Walton* right that was once in the ownership of an allottee of the Crow Tribe and transferred to non-Indian fee status. The Stipulation should therefore be approved.

7. The notice-type issue remark 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 for claim 43O 30145577 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.

Service via USPS Mail:

Kerri Parr
Rodney K. Parr
Chanda Richards
PO Box 7
Wyola, MT 59089

Service Via Electronic Mail:

David W Harder
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999 18TH St South, Terrace Suite 370
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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
LITTLE BIGHORN RIVER
BASIN 43O

Water Right Number: 43O 30145577 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: KERRI PARR
PO BOX 7
WYOLA, MT 59089

RODNEY K PARR
PO BOX 7
WYOLA, MT 59089

CHANDA RICHARDS
PO BOX 7
WYOLA, MT 59089

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: PASS 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		SWSW	26	8S	35E	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			SWSW	26	8S	35E	BIG HORN

THE PLACE OF USE IS LOCATED IN BIA LOT 323.

Remarks:

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