

MONTANA WATER COURT
YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

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CLAIMANT: Boe Ranch Co.

NOTICE OF INTENT TO APPEAR: Wild Eagle Mountain Ranch
LLC

CASE 43B-0774-R-2022
43B 5703-00

ORDER REINSTATING FLOW RATE AND CLOSING CASE

Claim 43B 5703-00 was included in the Preliminary Decree for the Yellowstone River, Above and Including Bridger Creek, Basin 43B, issued May 9, 2019. On September 29, 2022, the above-captioned claim was consolidated into Water Court Case 43B-0774-R-2022 to resolve an issue remark indicating the flow rate exceeded the guideline set by the Department of Natural Resources and Conservation (“DNRC”) and to resolve the Notice of Intent to Appear by Wild Eagle Mountain Ranch, LLC. (Doc¹. 1.00).

Based on the failure to respond by both Claimant, Fun-N-Sun, and Notice of Intent to Appear, Wild Eagle Mountain Ranch LLC, show cause deadlines were set. A deadline was set for the Claimant to show cause why the Court should not reduce the flow rate of claim 43B 5703-00 from 5.00 CFS to 374.00 GPM, the DNRC guideline. (Doc 4.00). A deadline was also set for the Notice of Intent to Appear to show cause why the Court should not dismiss it from the case. Nothing was filed by Claimant nor Notice of Intent to Appear.

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

On March 15, 2023, a Master's Report was issued in Case 43B-0774-R-2022. (Doc. 5.00). The Master's Report dismissed the Notice of Intent to Appear and recommended the flow rate for claim 43B 5703-00 be reduced to 374.00 GPM. The Master's Report received no objections. On April 4, 2023, the Court adopted the Master's Report and its Recommendations. (Doc. 6.00). Water Court Case 43B-0774-R-2022 was closed on April 4, 2023.

Two years later, on May 13, 2025, Boe Ranch Co. ("Boe Ranch") filed a Motion for Relief moving the Court to reopen Water Court Case 43B-0774-R-2022 to correct the flow rate reduction for claim 43B 5703-00. (Doc. 7.00). Boe Ranch explained that it, not Fun-N-Sun, is the owner of the claim. According to Boe Ranch, ownership of claim 43B 5703-00 was not properly updated when Boe Ranch purchased the property from Fun-N-Sun on May 8, 2000. Claim 43B 5703-00 was missed when the ownership of the set of water rights owned by Fun-N-Sun was updated to Boe Ranch. *Id.*

Upon a showing of good cause pursuant to Rule 60(b)(1) of the Montana Rules of Civil Procedure, the Court reopened case 43B-0774-R-2022 and set a deadline for Boe Ranch to file evidence to support re-instating the 5.00 CFS flow rate. (Doc. 9.00).

On November 3, 2025, Boe Ranch filed evidence, including a report by Ben Davis of Downstream Research to explain why the 5.00 CFS should be retained. Claim 43B 5073-00 is a decreed right. Boe Ranch asserted the right has been decreed twice by the Sixth Judicial District Court of Sweet Grass County; first, in an 1899 decree in Case No. 105; and second, in a 1911 decree in Case No. 406. Further, the report by Mr. Davis concluded that the ditch associated with the claim has a capacity of nearly three times the 5 CFS flow rate and that the full flow rate is needed based on various factors, including ditch loss.

The claim received an issue remark noting that the flow rate exceeded the guideline set by the DNRC. Section 85-2-248(2), Mont. Code Ann. Requires the Water Court to resolve issue remarks. The factual evidence on which an issue remark is based must meet the preponderance of the evidence to overcome the statement of claim. *43Q 200996-00 et al. Order Establishing Volume and Order Closing Case. June 8, 2015.* The reduction to the flow rate in the March 15, 2023 Master's Report was not based on

specific evidence. The reduction was made to resolve the issue remark as a sanction based on Fun-N-Sun's failure to respond. As is now known, at the time of this case, Fun-N-Sun had no interest in the claim.

The fact that the flow rate was reduced to resolve the issue remark as a sanction, in combination with the facts offered in Boe Ranch's November 3, 2025 filing provide a sufficient basis to re-instate the flow rate.

Therefore, it is

ORDERED that the flow rate of claim 43B 5703-00 is reinstated as 5.00 CFS. An abstract is provided with this order to confirm the reinstatement has been made in the state water right database.

ORDERED that proceedings in this case are CLOSED.

ELECTRONICALLY SIGNED AND DATED BELOW.

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 5703-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: BOE RANCH CO
PO BOX 15
GREYCLIFF, MT 59033-0015

Priority Date: JUNE 15, 1894

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION
Irrigation Type: FLOOD

Flow Rate: 5.00 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 22.00

Source Name: SPRING 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		SWNESW	6	1S	16E	SWEET GRASS

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: KUHN DITCH

Period of Use: MARCH 1 TO NOVEMBER 1

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	22.00		S2NE	6	1S	16E	SWEET GRASS
Total:	22.00						