

Montana Water Court  
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MONTANA WATER COURT  
YELLOWSTONE DIVISION  
YELLOWSTONE RIVER, FROM BRIDGER CREEK TO CLARKS FORK YELLOWSTONE  
BASIN 43QJ  
SECOND PRELIMINARY DECREE

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CLAIMANT: Roy S. Peterson

OBJECTOR: United States, DOI Bureau of Reclamation

**CASE 43QJ-0136-R-2025**  
43QJ 12145-00

**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 have **13 days** from the service date of the notice of filing of this report to file a written objection or request an extension of the objection period. Rule 23, Water Right Adjudication Rules; Rule 6, Montana Rules of Civil Procedure. 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**

The United States, DOI Bureau of Reclamation objected to this claim. The September 23, 2025 Court Minutes, Order Entering Default, and Order Setting Filing Deadline entered the

default of Roy S. Peterson pursuant to Rule 55(a), M.R.Civ.P. and Rule 22, W.R.Adj.R., for his failure to appear as directed in the August 27, 2025 Order Consolidating Case And Setting Scheduling Conference, and set the deadline for the parties to file documentation resolving the objection [FCE Doc. 2]. On January 9, 2026, the Order Granting Motion For Extension was entered extending the filing deadline to January 21, 2026. On January 21, 2026 the United States' Notice Of Proposed Resolution ["Proposed Resolution"] was filed requesting dismissal of this claim on the basis of abandonment and non-use since at least 1945 [FCE Doc.7]. This is deemed a motion. The Certificate of Service states that the Proposed Resolution was mailed to Dianne J. Booth and Joseph Booth, not to the claimant Roy S. Peterson.

On January 27, 2026 the Order Granting Motion For Extension mailed to Roy S. Peterson was returned to the Court as undeliverable. A new address was found and the Order was resent to Roy S. Peterson using the new address. It was not returned.

On February 17, 2026 the Order Updating Service List And Setting Filing Deadline was issued setting two deadlines [FCE Doc. 8]. The first is February 24, 2026 for the United States to serve its Proposed Resolution on Roy S. Peterson at his new address. On February 17, 2026 the United States' Notice Of Service was filed reporting that the Proposed Resolution was served on Roy S. Petersen at the new address [FCE Doc. 9]. The second deadline was for Roy S. Petersen to show cause why the claim should not be dismissed. The Order states:

ORDERED that the deadline is **March 24, 2026** for Roy S. Peterson to show cause in writing why the Proposed Resolution should not be granted and claim 43QJ 12145-00 dismissed as requested in the Proposed Resolution.

(**Emphasis** in original.) Nothing was filed by Roy S. Petersen. These documents are viewable in the Court's FullCourt Enterprise case management system.

#### APPLICABLE LAW

From *In re Doll*, 2019 Mont. Water LEXIS 12 [\*25-26]:

##### *c. Law of Abandonment*

Once an appropriator abandons a water right, the right ceases. *Holmstrom Land Co. v. Meagher Cnty. Newlan Creek Water Dist*, 185 Mont. 409, 423, 605 P.2d 1060, 1068 (1979) (citation omitted). "Abandonment of a water right is a question of fact." *79 Ranch v. Pitsch*, 204 Mont. 426, 431, 666 P.2d 215, 217 (1983). A finding of "[abandonment...requires both non-use and intent to abandon." *Skelton Ranch, Inc. v. Pondera County Canal & Reservoir Co.*, 2014 MT

167, ¶ 52, 375 Mont. 327, 328 P.3d 644 (citing *79 Ranch*, 204 Mont, at 432, 666 P.2d at 218). "The objector bears the initial burden of showing a long period of continuous non-use of the claimed water right." *Skelton Ranch*, ¶ 53. A showing of a long period of continuous non-use raises a "rebuttable presumption of abandonment." *Id.* (citing *79 Ranch*, 204 Mont, at 432-33, 666 P.2d at 218). "The burden then shifts to the claimants to produce '[s]pecific evidence explaining or excusing the long period of non-use....'" *Skelton Ranch*, ¶ 53 (quoting *In re Musselshell River Drainage Area*, 255 Mont. 43, 51, 840 P.2d 577, 582 (1992)). To rebut the presumption of abandonment, the claimant must establish "some fact or condition excusing the long period of nonuse, not mere expressions of hope or desire reflecting a 'gleam-in-the-eye philosophy' regarding future use of the water." *In re Adjudication of Water Rights of Clark Fork River*, 254 Mont. 11,15, 833 P.2d 1120, 1123 (1992) (citing *79 Ranch*, 204 Mont, at 433-34, 666 P.2d at 219).

*d. Length of Non-Use Required to Raise a Presumption of Abandonment*  
Nine years of non-use is "certainly very potent evidence, if it stood alone, of an intention to abandon." *Smith v. Hope Mining Co.*, 18 Mont. 432, 438, 45 P. 632, 634 (1896). An approximately 23-year period of non-use raised a rebuttable presumption of abandonment in *In re Adjudication of Water Rights of Clark Fork River*, 254 Mont. 11, 16, 833 P.2d 1120, 1123 (1992). In *Skelton Ranch*, ¶ 56, a period of non-use ranging from 18 to 29 years was sufficient to raise a presumption of abandonment. In *79 Ranch*, 204 Mont, at 432-33, 666 P.2d at 218, a 40-year period raised a presumption of abandonment, and in *Holmstrom*, 185 Mont, at 424, 605 P.2d at 1069 it was 15 years.

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 Proposed Resolution includes the supporting Declaration Of Kraig S. Van Voast and copies of multiple aerial photographs. The Declaration states:

4. The Claim was filed for flood irrigation using Yellowstone River water to irrigate 321.0 acres. The claimed means of diversion is a pump located in the SWNENE of Section 5, Township 2S, Range 19E, Stillwater County.

\* \* \* \* \*

6. Upon further review, there is no evidence of water use since at least 1945.

7. A predecessor owner of the water right, Fanchon Goddard, indicated in 1945 that “since my father’s death, this land has not been irrigated on account of the war, but expect to use this water just as [unreadable ...] can get necessary machinery and material.” See Ex. 2 at 2.

8. I have reviewed aerial imagery, and irrigation was not apparent in 1951, 1953, 1995, 2005, 2013, 2019, 2021, or 2023.

9. There is some evidence of water use in 1975, but this could have been precipitation run-off.

2. The aerial photograph copies attached to the Declaration clearly evidence non-use starting sometime before 1951.

3. The Declaration Of Kraig S. Van Voast and the aerial photograph copies evidence a long period of continuous non-use starting sometime before 1945. This long period of continuous non-use establishes a rebuttable presumption of intent to abandon.

3. Nothing was filed by Roy S. Petersen to rebut either the long period of continuous non-use or to rebut the presumption of an intent to abandon. Roy S. Peterson failed to show cause why this claim should not be dismissed as abandoned.

#### CONCLUSION OF LAW

The Proposed Resolution and its attachments are sufficient to contradict and overcome the prima facie claim, and in particular, to establish this claimed right has been abandoned and should be dismissed.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court dismiss claim 43QJ 12145-00 as abandoned. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the claim has been dismissed in the state's centralized record system.

#### **ELECTRONICALLY SIGNED AND DATED BELOW**

**Service Via USPS Mail:**

Roy S. Peterson  
4000 N. Freeway Suite 100  
Houston, TX 7702

**Service Via Electronic Mail:**

Mark J. Widerschein, Trial Attorney  
US Dept of Justice, ENRD-NRS  
Mark.Widerschein@usdoj.gov  
MontanaBasins.ENRD@USDOJ.GOV  
(Atty for: United States, DOI Bureau of  
Reclamation)

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, FROM BRIDGER CREEK TO CLARKS FORK YELLOWSTONE**  
**BASIN 43QJ**

**Water Right Number:** 43QJ 12145-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** ROY S PETERSON  
4000 N FREEWAY SUITE 100  
HOUSTON, TX 77022

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** YELLOWSTONE RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.