

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

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

* * * * *

CLAIMANT: Billings Bench Water Association

CASE 43QJ-0125-R-2025

43QJ 210895-00

OBJECTOR: United States, DOI Bureau of Land Management

NOTICE OF INTENT TO APPEAR: Gary M. Davis

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 Land Management objected to this Billings Bench Water Association claim 43QJ 210895-00. Gary M. Davis filed a notice of intent to appear. On December 3, 2025, the parties filed a Stipulation To Resolve Objections. The Stipulation is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

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 Second Preliminary Decree includes a parcel in the place of use with legal description section 6, T2S, R24E, YELLOWSTONE. The legal description should be section 6, T2S, R25E, YELLOWSTONE.

The following remark should be added to the place of use: THE PLACE OF USE IS LIMITED TO PRIVATE LAND.

2. The Second Preliminary Decree also includes the following notice remark:

CLAIM FILED LATE 08/13/1984 . IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

This remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the *prima facie* claim.

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 Second 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:

Billings Bench Water Association
PO Box 50150
Billings, MT 59105

Gary M. Davis
2745 Homer Davis Rd
Shepherd, MT 59079

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 Land Management*)

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

Water Right Number: **43QJ 210895-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: BILLINGS BENCH WATER ASSN
PO BOX 50150
BILLINGS, MT 59105

Priority Date: JANUARY 8, 1904

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 08/13/1984 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: FILED

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: YELLOWSTONE RIVER

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		NWSESW	15	2S	24E	YELLOWSTONE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

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			SE	12	2S	24E	YELLOWSTONE
2				6	2S	25E	YELLOWSTONE
3				7	2S	25E	YELLOWSTONE
4				1	1S	25E	YELLOWSTONE
5				12	1S	25E	YELLOWSTONE
6			W2	13	1S	25E	YELLOWSTONE
7				14	1S	25E	YELLOWSTONE
8			SE	21	1S	25E	YELLOWSTONE

9		22	1S	25E	YELLOWSTONE
10	NW	23	1S	25E	YELLOWSTONE
11		27	1S	25E	YELLOWSTONE
12		28	1S	25E	YELLOWSTONE
13		32	1S	25E	YELLOWSTONE
14	SE	6	1S	26E	YELLOWSTONE
15	NE	7	1S	26E	YELLOWSTONE
16	SE	35	1N	25E	YELLOWSTONE
17	NE	36	1N	25E	YELLOWSTONE
18		1	1N	26E	YELLOWSTONE
19	SE	2	1N	26E	YELLOWSTONE
20		3	1N	26E	YELLOWSTONE
21		4	1N	26E	YELLOWSTONE
22		9	1N	26E	YELLOWSTONE
23		10	1N	26E	YELLOWSTONE
24		11	1N	26E	YELLOWSTONE
25		12	1N	26E	YELLOWSTONE
26		13	1N	26E	YELLOWSTONE
27		14	1N	26E	YELLOWSTONE
28		15	1N	26E	YELLOWSTONE
29		16	1N	26E	YELLOWSTONE
30	NE	21	1N	26E	YELLOWSTONE
31		22	1N	26E	YELLOWSTONE
32		23	1N	26E	YELLOWSTONE
33		24	1N	26E	YELLOWSTONE
34	NW	26	1N	26E	YELLOWSTONE
35		27	1N	26E	YELLOWSTONE
36		28	1N	26E	YELLOWSTONE
37		29	1N	26E	YELLOWSTONE
38		31	1N	26E	YELLOWSTONE
39		32	1N	26E	YELLOWSTONE
40		33	1N	26E	YELLOWSTONE
41		36	2N	26E	YELLOWSTONE
42		6	1N	27E	YELLOWSTONE
43		7	1N	27E	YELLOWSTONE
44	SE	1	2N	26E	YELLOWSTONE
45		13	2N	26E	YELLOWSTONE
46		25	2N	26E	YELLOWSTONE
47	SE	36	2N	26E	YELLOWSTONE
48		1	2N	27E	YELLOWSTONE
49		2	2N	27E	YELLOWSTONE
50		3	2N	27E	YELLOWSTONE
51		4	2N	27E	YELLOWSTONE
52		5	2N	27E	YELLOWSTONE
53		7	2N	27E	YELLOWSTONE
54		8	2N	27E	YELLOWSTONE
55		9	2N	27E	YELLOWSTONE

56		10	2N	27E	YELLOWSTONE	
57		11	2N	27E	YELLOWSTONE	
58		12	2N	27E	YELLOWSTONE	
59		13	2N	27E	YELLOWSTONE	
60		14	2N	27E	YELLOWSTONE	
61		15	2N	27E	YELLOWSTONE	
62		16	2N	27E	YELLOWSTONE	
63		17	2N	27E	YELLOWSTONE	
64		18	2N	27E	YELLOWSTONE	
65		19	2N	27E	YELLOWSTONE	
66		20	2N	27E	YELLOWSTONE	
67		21	2N	27E	YELLOWSTONE	
68		22	2N	27E	YELLOWSTONE	
69		23	2N	27E	YELLOWSTONE	
70		W2	24	2N	27E	YELLOWSTONE
71		W2	25	2N	27E	YELLOWSTONE
72			27	2N	27E	YELLOWSTONE
73			28	2N	27E	YELLOWSTONE
74			29	2N	27E	YELLOWSTONE
75			30	2N	27E	YELLOWSTONE
76			31	2N	27E	YELLOWSTONE
77			32	2N	27E	YELLOWSTONE
78			33	2N	27E	YELLOWSTONE
79		NW	6	2N	28E	YELLOWSTONE
80			15	3N	27E	YELLOWSTONE
81			19	3N	27E	YELLOWSTONE
82			20	3N	27E	YELLOWSTONE
83			22	3N	27E	YELLOWSTONE
84			23	3N	27E	YELLOWSTONE
85			26	3N	27E	YELLOWSTONE
86			27	3N	27E	YELLOWSTONE
87			28	3N	27E	YELLOWSTONE
88			29	3N	27E	YELLOWSTONE
89			30	3N	27E	YELLOWSTONE
90		E2	31	3N	27E	YELLOWSTONE
91			32	3N	27E	YELLOWSTONE
92			33	3N	27E	YELLOWSTONE
93			34	3N	27E	YELLOWSTONE
94			35	3N	27E	YELLOWSTONE
95			36	3N	27E	YELLOWSTONE
96			28	3N	28E	YELLOWSTONE
97			29	3N	28E	YELLOWSTONE
98			30	3N	28E	YELLOWSTONE
99			31	3N	28E	YELLOWSTONE
100			32	3N	28E	YELLOWSTONE
101			14	2S	24E	YELLOWSTONE
102			13	2S	24E	YELLOWSTONE

103		24	2N	26E	YELLOWSTONE	
104		6	2N	27E	YELLOWSTONE	
105		W2	7	2N	28E	YELLOWSTONE
106		W2	16	3N	27E	YELLOWSTONE
107		E2	21	3N	27E	YELLOWSTONE
108		SW	24	3N	27E	YELLOWSTONE
109			25	3N	27E	YELLOWSTONE
110		W2	25	3N	26E	YELLOWSTONE
111		NW	33	3N	28E	YELLOWSTONE

THE PLACE OF USE IS LIMITED TO PRIVATE LAND

Remarks:

THIS APPROPRIATION OF WATER TAKES WATER FROM THE YELLOWSTONE RIVER, FROM BRIDGER CREEK TO CLARKS FORK YELLOWSTONE DRAINAGE (BASIN 43QJ) AND USES IT IN THE YELLOWSTONE RIVER, BETWEEN CLARKS FORK YELLOWSTONE & BIGHORN RIVER DRAINAGE (BASIN 43Q).