

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: Montana State Board of Land Commissioners -
Forestry and Trust Lands Division

CASE 43QJ-0250-R-2025

43QJ 47490-00

43QJ 30106803

OBJECTOR: Montana State Board of Land Commissioners -
Forestry and Trust Lands Division

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

Montana State Board of Land Commissioners - Forestry and Trust Lands Division ["Trust Lands"] objected to each of its claims 43QJ 47490-00 and 43QJ 30106803. Claim 43QJ 47490-00 appeared in the Second Preliminary Decree with the following issue remark:

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

On December 10, 2025, Trust Lands filed its Motion To Resolve MBLC Objections, Resolve Issue Remark and Verified Motion To Amend Claim 43QJ 47490-00. This document is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

The Montana Water Court has jurisdiction to review a motion to amend pursuant to section 85-2-233(6), MCA.

Rule 15 M.R.Civ.P. restricts the scope of the amendments to the conduct, transaction, or occurrence set forth in the original pleading or, in other words, the "same set of operative facts as contained in the original pleading." *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-23, 708 P.2d 1014, 1017 (1985). The requested amendment "merely makes more specific that which has already been alleged." *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15, 504 P.2d 277, 281 (1972).

Notice must be published by newspaper if the requested amendments "may adversely affect other water rights." Section 85-2-233(6)(a)(i), 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 and 85-2-222, 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 or amending their own claims.

Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. For claim 47490-00, the Second Preliminary Decree states that the legal description for the point of diversion, reservoir, and place of use is SESENW section 2, T2S, R19E,

STILLWATER. The legal description for all three should be SENWSE section 2, T2S, R19E, STILLWATER. The issue remark concerning the existence of the reservoir should be removed as addressed and resolved.

2. For claim 43QJ 30106803, the change requested in the Verified Motion To Amend Claim 43QJ 47490-00 [typo 43QJ 30106803] arises out of the same conduct, transaction, or occurrence specified on the original Statement of Claim, is based on the same operative facts specified in the Statement of Claim, and merely makes more specific that which was already claimed on the original Statement of Claim.

3. The Second Preliminary Decree states that the place of use legal description is the S2S2 section 36, T1S, R20E, STILLWATER. The legal description should be S2S2 section 36, T1N, R20E, STILLWATER. The following remark should be added to the abstract of this claim noting the amendment: THE PLACE OF USE LEGAL DESCRIPTION WAS AMENDED BY THE WATER COURT PURSUANT TO SECTION 85-2-233(6), MCA.

The Second Preliminary Decree also includes the following notice remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43QJ DECREE ISSUED 07/23/1985.

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

CONCLUSIONS OF LAW

1. The requested amendment of claim 43QJ 30106803 does not adversely affect other water rights as it is a correction to the abstract which does not make any change to the actual historical use of the claimed right on the ground. Notice by publication of this amendment is not required. Section 85-2-233(6), MCA.

2. The requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15, 504 P.2d 277, 281 (1972).

3. The settlement filed by the claimant is sufficient to contradict and overcome the *prima facie* claims and to resolve the issue remark without evidentiary hearing. Section 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above, this Master recommends that the Court grant the motion to amend claim 43QJ 30106803 and make the changes to both claims specified in the Findings of

Fact to correct the Second Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim for each 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 Electronic Mail:

Brian Bramblett

Montana Department of

Natural Resources and Conservation

bbramblett@mt.gov

jean.saye@mt.gov

(Atty for: Montana State Board of Land Commissioners - Forestry and Trust Lands Division)

Ben Eckstein

MT DOJ Agency Legal Services Bureau for TLMD

[BLCWATERCOURT@mt.gov](mailto:BLCWATERCOURT@MT.GOV)

(Atty for: Montana State Board of Land Commissioners - Forestry and Trust Lands Division)

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

Water Right Number: **43QJ 47490-00 STATEMENT OF CLAIM**

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
FORESTRY AND TRUST LANDS DIVISION
PO BOX 201601
HELENA, MT 59620-1601

***Priority Date:** JUNE 5, 1908

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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: SPRING, UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SENWSE	2	2S	19E	STILLWATER

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

Govt Lot	Qtr Sec	Sec	Twp	Rge	County
	SENWSE	2	2S	19E	STILLWATER

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SENWSE	2	2S	19E	STILLWATER

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

Water Right Number: **43QJ 30106803** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
FORESTRY AND TRUST LANDS DIVISION
PO BOX 201601
HELENA, MT 59620-1601

Priority Date: NOVEMBER 8, 1889

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: VALLEY CREEK, NORTH FORK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Otr Sec	Sec	Twp	Rge	County
1		S2S2	36	1N	20E	STILLWATER

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:

ID	Acres	Govt Lot	Otr Sec	Sec	Twp	Rge	County
1			S2S2	36	1N	20E	STILLWATER

Remarks:

THE PLACE OF USE LEGAL DESCRIPTION WAS AMENDED BY THE WATER COURT PURSUANT TO SECTION 85-2-233(6), MCA.