

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: Kennedy Properties LLC

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

CASE 43QJ-0123-R-2025

43QJ 197394-00

43QJ 197424-00

43QJ 30176132

43QJ 30176133

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 Montana State Board of Land Commissioners - Forestry and Trust Lands Division ("State") objected to each of these Kennedy Properties LLC claims. On March 11, 2026 the State filed a Status Report And Proposed Resolution Of Objection providing the information

needed to find the State has an ownership interest in each claim and to split the claims (“Proposed Resolution”)(FCE Doc. 14). As Kennedy Properties LLC did not respond to the Proposed Resolution, the Order Setting Filing Deadline was issued on March 17, 2026 setting an April 17, 2026 deadline for Kennedy Properties LLC to show cause in writing why the changes stated in the Proposed Resolution should not be made. Nothing was filed.

On May 18, 2026 an Order Setting Filing Deadline was issued for both parties to file an apportionment of either the flow rate or the volume of claim 43QJ 197394-00 by June 30, 2026. (FCE Doc. 16). On June 26, 2026 the State filed its Filing Regarding Apportionment (FCE Doc. 17). Nothing was filed by Kennedy Properties LLC.

The documents are viewable in the Court’s FullCourt Enterprise case management system.

APPLICABLE LAW

If, at the time an appropriation is made, the appropriator is a lessee of school trust land and if the lessee makes and uses the appropriation on school trust land, the appropriation is owned by the State of Montana rather than the lessee. *Department of State Lands v. Pettibone*, 216 Mont. 361, 702 P.2d 948 (1985) (“*Pettibone*”). Implicit in this rule is the determination that the land was indeed fully vested as state school trust land at the time the appropriation was made. See *Findings of Fact, Conclusions of Law, and Memorandum*, Case No. 43A-A, June 29, 2000; *Opinion* (page 3), Case No. 41G-190, July 19, 2005, and *Opinion*, Case No. 41G-3, August 3, 2005.

Rule 2(a)(33), Water Right Claim Examination Rules, states: “‘Implied Claim’ means a claim authorized by the water court to be separated and individually identified when a statement of claim includes multiple rights.”

Rule 2(a)(63), Water Right Claim Examination Rules, states: “‘Split Claim’ means the division of one water right claim into two or more separate claims. When a claim is split, one portion of the claim maintains the original claim number and the other separated portions are assigned new claim numbers.”

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, Water Right Adjudication Rules.

FINDINGS OF FACT

1. The Proposed Resolution requests generation of an implied claim from each of these claims. The Proposed Resolution does not request dividing each claim because two different water rights are claimed, a prerequisite for generating an implied claim. Instead, what is requested is dividing the water right claimed between the two owners. Splitting each claim rather than generating an implied claim is the more appropriate action.

2. For irrigation claim 43QJ 197394-00, the Second Preliminary Decree states that the priority date is April 15, 1893 and the place of use is:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
5.00	NESW	9	1N	19E	STILLWATER
12.00	SESW	9	1N	19E	STILLWATER
11.00	SWSW	9	1N	19E	STILLWATER
17.00	NWNW	16	1N	19E	STILLWATER
<u>7.00</u>	E2NENE	17	1N	19E	STILLWATER
52.00					

3. The State owns the NWNW section 16, T1N, R19E and therefore, owns the portion of claim 43QJ 197394-00 used on this State land. Claim number 43QJ 197394-00 should be used for the Kennedy Properties LLC portion of this claimed right. Split claim number 43QJ 30176132 should be generated for the State portion of this claimed right.

4. For claim 43QJ 197394-00, the 17.00 acre parcel in the NWNW section 16, T1N, R19E should be removed; the maximum acres should be reduced from 52.00 to 35.00; the standard volume remark should be removed, the volume should be quantified as 47.11 AC-FT, and the following volume remark should be added: THE WATER COURT HAS DETERMINED THAT A VOLUME QUANTIFICATION IS REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT.

5. Split claim 43QJ 30176132 should be the same as 43QJ 197394-00 except the owner should be the State; the place of use should be the NWNW section 16, T1N, R19E; the maximum acres should be 17.00, and the volume should be 22.89 AC-FT.

6. For stockwater claim 43QJ 197424-00, the Second Preliminary Decree states that the priority date is December 31, 1942 and the place of use is:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	12	1N	18E	STILLWATER
E2NE	13	1N	18E	STILLWATER

The State owns the NESE section 12, T1N, R18E and therefore, owns the portion of claim 43QJ 197424-00 used on this State land. Claim number 43QJ 197424-00 should be used for the Kennedy Properties LLC portion of this claimed right. Split claim number 43QJ 30176133 should be generated for the State portion of this claimed right.

7. For claim 43QJ 197424-00, the single parcel for all of section 12, T1N, R18E should be removed and the following parcels should be added for the remaining portions of section 12 associated with this right: W2, SWNE, W2SE, and SESE section 12, T1N, R18E. The same changes should be made to the point of diversion for this LIVESTOCK DIRECT FROM SOURCE claim.

8. Split claim 43QJ 30176133 should be the same as 43QJ 197424-00 except the owner should be the State, and the place of use and point of diversion should both be the NESE section 12, T1N, R18E.

CONCLUSION OF LAW

The documentation filed by the State provides sufficient information to establish the State owns the NWNW section 16, T1N, R19E, and the NESE section 12, T1N, R18E, and pursuant to *Pettibone*, therefore owns the portions of the claimed rights used on these State lands. Each claim should be split into a separate claim for Kenndey Properties LLC and a separate claim for the State.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court split claims 43QJ 197394-00 and 43QJ 197424-00 as requested and 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 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 USPS Mail:

Kennedy Properties LLC
PO Box 259
Mer Rouge, LA 71261-0259

Service Via Electronic Mail:

Kelley Lewis
Clare Ols
admin@klhadvisors.com
klh@klhadvisors.com
clare@klhadvisors.com
(atty for: State of Montana Board of Land Commissioners)

****Note: Caption Updated: 7-23-26****

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM**

**YELLOWSTONE RIVER, FROM BRIDGER CREEK TO CLARKS FORK YELLOWSTONE
BASIN 43QJ**

Water Right Number: 43QJ 197394-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: KENNEDY PROPERTIES LLC
PO BOX 259
MER ROUGE, LA 71261-0259

Priority Date: APRIL 15, 1893

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 1.00 CFS

Volume: 47.11 AC-FT

THE WATER COURT HAS DETERMINED THAT A VOLUME QUANTIFICATION IS
REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT.

Climatic Area: 3 - MODERATE

Maximum Acres: 35.00

Source Name: EAST WHITE BEAVER 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		SENESEW	9	1N	19E	STILLWATER

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: PUMP

2		NESESEW	9	1N	19E	STILLWATER
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Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: PUMP

Period of Use: APRIL 15 TO OCTOBER 15

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	5.00		NESW	9	1N	19E	STILLWATER
2	12.00		SESW	9	1N	19E	STILLWATER
3	11.00		SWSW	9	1N	19E	STILLWATER
4	7.00		E2NENE	17	1N	19E	STILLWATER

Total: 35.00

Remarks:

SPLIT CLAIM NO. 43QJ 30176132 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM**

**YELLOWSTONE RIVER, FROM BRIDGER CREEK TO CLARKS FORK YELLOWSTONE
BASIN 43QJ**

Water Right Number: 43QJ 197424-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: KENNEDY PROPERTIES LLC
PO BOX 259
MER ROUGE, LA 71261-0259

Priority Date: DECEMBER 31, 1942

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: SHEEP CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2	12	1N	18E	STILLWATER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		E2NE	13	1N	18E	STILLWATER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		SWNE	12	1N	18E	STILLWATER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		W2SE	12	1N	18E	STILLWATER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		SESE	12	1N	18E	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:

<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			W2	12	1N	18E	STILLWATER
2			E2NE	13	1N	18E	STILLWATER
3			SWNE	12	1N	18E	STILLWATER
4			W2SE	12	1N	18E	STILLWATER
5			SESE	12	1N	18E	STILLWATER

Remarks:

SPLIT CLAIM NO. 43QJ 30176133 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

POST DECREE

ABSTRACT OF WATER RIGHT CLAIM

YELLOWSTONE RIVER, FROM BRIDGER CREEK TO CLARKS FORK YELLOWSTONE

BASIN 43QJ

Water Right Number: 43QJ 30176132 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

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

Priority Date: APRIL 15, 1893

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 1.00 CFS

Volume: 22.89 AC-FT

THE WATER COURT HAS DETERMINED THAT A VOLUME QUANTIFICATION IS REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT.

Climatic Area: 3 - MODERATE

Maximum Acres: 17.00

Source Name: EAST WHITE BEAVER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SENE SW	9	1N	19E	STILLWATER
Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	PUMP					
2		NESE SW	9	1N	19E	STILLWATER
Period of Diversion:	APRIL 15 TO OCTOBER 15					
Diversion Means:	PUMP					

Period of Use: APRIL 15 TO OCTOBER 15

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	17.00		NWNW	16	1N	19E	STILLWATER
Total:	17.00						

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 43QJ 197394-00.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43QJ SECOND PRELIMINARY DECREE ISSUED 09/25/2024.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM**

**YELLOWSTONE RIVER, FROM BRIDGER CREEK TO CLARKS FORK YELLOWSTONE
BASIN 43QJ**

Water Right Number: 43QJ 30176133 STATEMENT OF CLAIM

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FORESTRY AND TRUST LANDS DIVISION
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HELENA, MT 59620-1601

Priority Date: DECEMBER 31, 1942

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: SHEEP 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		NESE	12	1N	18E	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:

<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			NESE	12	1N	18E	STILLWATER

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 43QJ 197424-00.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43QJ SECOND PRELIMINARY DECREE ISSUED 09/25/2024.