

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

* * * * *

CLAIMANTS: Leslie Bermes; Ty Bermes; Guenthner
Properties LLC

CASE 43QJ-0155-R-2025
43QJ 30122198

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

Leslie Bermes, Ty Bermes, and Guenthner Properties LLC claim 43QJ 30122198 appeared in the Second Preliminary Decree with the following issue remark:

THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE. AVAILABLE DATA SUPPORT A FLOW RATE OF 60.00 GPM

The issue remark was not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark, and the Court can provide the claimants an opportunity to file additional information or evidence. On February 17, 2025, the Order Consolidating Case and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA was issued setting various filing deadlines for the claimants and the DNRC. On April 21, 2025, the DNRC Memorandum was filed making recommendations to resolve the issue remark.

The February 17, 2025 the Order Consolidating Case and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA, includes the following:

ORDERED that the deadline is **June 25, 2026** for the claimants to file a written response to the memorandum *if they disagree with any recommendation in the memorandum*. If no written response is filed by this deadline, the Court will conclude that the claimants agree with the memorandum recommendations.

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

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 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 their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Second Preliminary Decree states that the flow rate is 60.00 GPM. The flow rate should be 35.00 GPM. The issue remark should be removed as addressed and resolved.

2. The Second Preliminary Decree 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.

CONCLUSION OF LAW

The information provided by the DNRC Memorandum is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

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:

Leslie Bermes
Ty Bermes
PO Box 123
Park City, MT 59063-0123

Guenthner Properties LLC
%Rachel Gappa
PO Box 547
Park City, MT 59063-0547

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

Water Right Number: 43QJ 30122198 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: GUENTHNER PROPERTIES LLC
%RACHEL GAPPA
PO BOX 547
PARK CITY, MT 59063-0547

Priority Date: JUNE 30, 1953

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 35.00 GPM

***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: GROUNDWATER

Source Type: GROUNDWATER

***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		SENWSE	29	2S	23E	STILLWATER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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			SENWSE	29	2S	23E	STILLWATER

Subdivision: PARK CITY ORIGINAL TOWNSITE TRACT/LOT: 13-17 BLOCK: 131

Contract for Deed Purchasers: LESLIE BERMES
PO BOX 123
PARK CITY, MT 59063-0123

TY BERMES
PO BOX 123
PARK CITY, MT 59063-0123

THIS WATER RIGHT IS APPURTENANT TO REAL PROPERTY THAT IS THE SUBJECT OF A CONTRACT FOR DEED. THE CONTRACT FOR DEED PURCHASER IS ENTITLED TO THE SAME NOTICE AS THE OWNER OF THE PROPERTY PURSUANT TO 85-2-232(1)(C) AND 70-20-115, MCA. REFERENCE TO THE CONTRACT FOR DEED PURCHASERS IN THIS ABSTRACT IS FOR NOTICE PURPOSES ONLY AND DOES NOT AMOUNT TO A STATEMENT REGARDING OWNERSHIP. UPON TRANSFER OF THE PROPERTY IDENTIFIED AS THE PLACE OF USE FOR THIS WATER RIGHT, THE TRANSFEREE IS RESPONSIBLE FOR UPDATING OWNERSHIP AS REQUIRED BY 85-2-423 AND -424, MCA. IN THE EVENT OF A DEFAULT RESULTING IN TERMINATION OF THE CONTRACT FOR DEED AND RELEASE OF DOCUMENTS FROM ESCROW, THE OWNERS SHALL PROVIDE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WITH A COPY OF A QUIT CLAIM DEED OR SIMILAR INSTRUMENT INDICATING THE CONTRACT FOR DEED PURCHASERS ARE NO LONGER ENTITLED TO RECEIVE NOTICE OF PROCEEDINGS INVOLVING THIS WATER RIGHT.