

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 Dept. of Fish Wildlife & Parks

OBJECTOR: Montana Dept. of Fish Wildlife & Parks

CASE 43QJ-0233-R-2026

43QJ 188698-00

43QJ 188699-00

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

On October 22, 2024 Montana Dept. of Fish Wildlife & Parks filed a Verified Motion To Amend Claim Nos. 43QJ 188698-00 and 43QJ 188699-00. As this was filed during the objection

filing period, it was deemed and docketed as an objection to each claim. The objection can be viewed in each scanned claim file on the DNRC Water Right Query System at <http://wrqs.dnrc.mt.gov>.

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. For claim 43QJ 188698-00, the Second Preliminary Decree states that the periods of diversion and period of use are APRIL 15 TO OCTOBER 31. They should all be APRIL 16 TO OCTOBER 31.

The Second Preliminary Decree includes the following notice remark on the abstract for this claim:

A GUIDELINE FOR THE FLOW RATE AND VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND FLOW RATE AND VOLUME REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE AND VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE AND VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

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

2. For claim 43QJ 188699-00, the Second Preliminary Decree states that the periods of diversion and period of use are NOVEMBER 1 TO APRIL 19. They should all be NOVEMBER 1 TO APRIL 15.

The Second Preliminary Decree includes the following notice remark on the abstract for this claim:

A GUIDELINE FOR THE FLOW RATE AND VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND FLOW RATE AND VOLUME REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE AND VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE AND VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

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

CONCLUSION OF LAW

The objections filed by the claimant are sufficient to contradict and overcome the prima facie claims.

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 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:

Kevin Rechkoff
Agency Legal Counsel
Montana Department of Fish, Wildlife, & Parks
kevin.rechkoff@mt.gov
Audrey.Kelly@mt.gov

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM**

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

Water Right Number: 43QJ 188698-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MONTANA DEPT OF FISH WILDLIFE & PARKS
PO BOX 200701
HELENA, MT 59620-0701

Priority Date: DECEMBER 14, 1970

Type of Historical Right: FILED

Purpose (Use): FISH AND WILDLIFE

THIS RIGHT IS SUBJECT TO ALL PRIOR RIGHTS. THE FLOW RATE AND VOLUME REPRESENT THE CLAIMED NEEDS OF THE STATE DEPARTMENT OF FISH WILDLIFE AND PARKS TO MAINTAIN STREAM FLOWS FOR THE PRESERVATION OF FISH AND WILDLIFE HABITAT. THE CLAIMED AMOUNTS ARE MADE A MATTER OF RECORD BUT ARE SUBJECT TO CHANGE SHOULD THE COURT DETERMINE THAT THOSE WATERS ARE NEEDED FOR USES DETERMINED TO BE MORE BENEFICIAL TO THE PUBLIC. SEE R.C.M. §89-801 (1947), NOW REPEALED BY SEC. 46, CH. 452, LAWS 1973.

Flow Rate: 2,600.00 CFS

Volume: 1,026,005.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: YELLOWSTONE RIVER

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		NE	29	2S	20E	STILLWATER
Period of Diversion:	APRIL 16 TO OCTOBER 31					
Diversion Means:	INSTREAM					
2		S2	4	3S	21E	STILLWATER
Period of Diversion:	APRIL 16 TO OCTOBER 31					
Diversion Means:	INSTREAM					
3		N2	8	3S	21E	STILLWATER
Period of Diversion:	APRIL 16 TO OCTOBER 31					
Diversion Means:	INSTREAM					
4		SE	20	2S	20E	STILLWATER
Period of Diversion:	APRIL 16 TO OCTOBER 31					
Diversion Means:	INSTREAM					
5			9	3S	21E	STILLWATER
Period of Diversion:	APRIL 16 TO OCTOBER 31					
Diversion Means:	INSTREAM					

6	S2	21	2S	20E	STILLWATER
Period of Diversion:	APRIL 16 TO OCTOBER 31				
Diversion Means:	INSTREAM				
7		28	2S	20E	STILLWATER
Period of Diversion:	APRIL 16 TO OCTOBER 31				
Diversion Means:	INSTREAM				
8	S2	27	2S	20E	STILLWATER
Period of Diversion:	APRIL 16 TO OCTOBER 31				
Diversion Means:	INSTREAM				
9	N2	34	2S	20E	STILLWATER
Period of Diversion:	APRIL 16 TO OCTOBER 31				
Diversion Means:	INSTREAM				
10	N2	35	2S	20E	STILLWATER
Period of Diversion:	APRIL 16 TO OCTOBER 31				
Diversion Means:	INSTREAM				
11	S2	26	2S	20E	STILLWATER
Period of Diversion:	APRIL 16 TO OCTOBER 31				
Diversion Means:	INSTREAM				
12	S2	25	2S	20E	STILLWATER
Period of Diversion:	APRIL 16 TO OCTOBER 31				
Diversion Means:	INSTREAM				
13		36	2S	20E	STILLWATER
Period of Diversion:	APRIL 16 TO OCTOBER 31				
Diversion Means:	INSTREAM				
14	S2	31	2S	21E	STILLWATER
Period of Diversion:	APRIL 16 TO OCTOBER 31				
Diversion Means:	INSTREAM				
15	N2	6	3S	21E	STILLWATER
Period of Diversion:	APRIL 16 TO OCTOBER 31				
Diversion Means:	INSTREAM				
16		5	3S	21E	STILLWATER
Period of Diversion:	APRIL 16 TO OCTOBER 31				
Diversion Means:	INSTREAM				
Period of Use:	APRIL 16 TO OCTOBER 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			NE	29	2S	20E	STILLWATER
2				8	3S	21E	STILLWATER
3				9	3S	21E	STILLWATER
4			SE	20	2S	20E	STILLWATER
5			S2	4	3S	21E	STILLWATER
6			S2	21	2S	20E	STILLWATER
7				28	2S	20E	STILLWATER

8	S2	27	2S	20E	STILLWATER
9	N2	34	2S	20E	STILLWATER
10	N2	35	2S	20E	STILLWATER
11	S2	26	2S	20E	STILLWATER
12	S2	25	2S	20E	STILLWATER
13		36	2S	20E	STILLWATER
14	S2	31	2S	21E	STILLWATER
15	N2	6	3S	21E	STILLWATER
16		5	3S	21E	STILLWATER

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM**

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

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Volume: 493,769.00 AC-FT

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Source Type: SURFACE WATER

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<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			29	2S	20E	STILLWATER
Period of Diversion:	NOVEMBER 1 TO APRIL 15					
Diversion Means:	INSTREAM					
2		S2	4	3S	21E	STILLWATER
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Period of Diversion:	NOVEMBER 1 TO APRIL 15					
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