

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

* * * * *

CLAIMANT: State of Montana Department of Transportation

CASE 43QJ-0207-R-2026
43QJ 30129229

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

State of Montana Department of Transportation claim 43QJ 30129229-00 appeared in the Second Preliminary Decree with the following issue remark:

NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.

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 claimant an opportunity to file additional information or evidence. On January 7, 2026 the Order Consolidating Case and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA [“Order”] was issued setting various filing deadlines for the claimant and the DNRC. On March 20, 2026 the DNRC Memorandum was filed making recommendations to resolve the issue remark and stating that the recommendations are based on a proposal from the claimant, copy attached to the DNRC Memorandum.

The Order includes the following:

ORDERED that the deadline is **April 20, 2026** for the claimant to file a written response to the memorandum *if it disagrees with any recommendation in the memorandum*. If no written response is filed by this deadline, the Court will conclude that the claimant agrees 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 does not include a flow rate. The flow rate should be 35.00 GPM. The issue remark should be removed as addressed and resolved.

2. The DNRC Memorandum notes an error in the source name. The Second Preliminary Decree states that the source is UNNAMED TRIBUTARY OF YELLOWSTONE RIVER. The source name should be SPRING, UNNAMED TRIBUTARY OF THE YELLOWSTONE RIVER.

3. 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. Section 85-2-248(3), (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 Electronic Mail:

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

Water Right Number: 43QJ 30129229 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: MONTANA, STATE OF DEPT OF TRANSPORTATION
REAL ESTATE SERVICES SECTION
PO BOX 201001
HELENA, MT 59620-1001

***Priority Date:** DECEMBER 31, 1955

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: SPRING, UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

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	6	SENE	1	2S	18E	STILLWATER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DEVELOPED SPRING

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		6	SWNE	1	2S	19E	STILLWATER