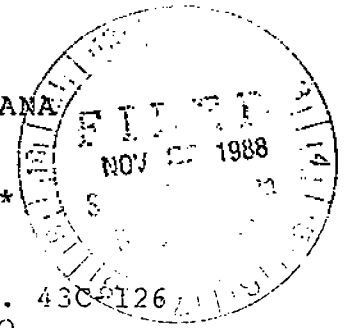


IN THE WATER COURTS OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
STILLWATER RIVER BASIN (43C)



* * * * *

IN THE MATTER OF THE ADJUDICATION OF)
THE EXISTING RIGHTS TO THE USE OF ALL) CASE NO. 43C-126
THE WATER, BOTH SURFACE AND UNDERGROUND,) CLAIM NO.
WITHIN THE STILLWATER RIVER DRAINAGE) 43C-W-189888-00,
AREA, INCLUDING ALL TRIBUTARIES OF THE) 189891-00, 189892-00,
STILLWATER RIVER IN STILLWATER, SWEET)
GRASS, PARK AND CARBON COUNTIES,)
MONTANA.)
_____)

CLAIMANT: William Mouat, Margaret deLannoy

OBJECTOR: Department of Natural Resources & Conservation
United States Department of Agriculture,
Forest Service, Harry W. Bass III Trust
ON MOTION OF THE WATER COURT

MASTER'S REPORT

FINDINGS OF FACT

1. The Montana Department of Natural Resources and Conservation (DNRC) filed timely objections contesting volume.
2. The Court called these in on its own motions regarding volume on 43C-W-189892 and priority date on 43C-W-189888 and 189891.
3. The Harry Bass III Trust filed a timely objection to 43C-W-189888 contesting priority date, volume, place of use, acres irrigated and source and flow rate.
4. The United States Department of Agriculture, Forest Service filed a timely objection to 43C-W-189888 contesting volume and flow rate.
5. The Court received a stipulation on 43C-W-189888 signed by William Mouat, William C. deLannoy, Trustee, Leanne Schraudner, attorney representing the Harry Bass III Trust and Ken Pitt, Special Assistant U.S. Attorney, representing the United States Department of Agriculture, Forest Service agreeing to changes in priority date and volume. The United States and

Harry Bass III Trust withdrew their objections upon the Courts acceptance of the stipulation.

6. After reviewing these facts the Master finds that there has been no overreaching or misunderstanding by the parties in the signing of this stipulation.

7. The Court received a withdrawal of objection on 43C-W-189888, 189891 and 189892 from the DNRC along with a September 26, 1986 report from Charley Carpenter of the DNRC with findings that the method of irrigation was natural overflow and water spreading.

8. The Court received an affidavit and letter from William Mouat regarding historical use and need for decreed volume amounts on 43C-W-189891 and 189892.

9. The lands claimed in 43C-W-189888 and 189891 were part of the Crow Indian Reservation on the priority dates claimed.

10. There is no evidence that the lands contained in 43C-W-189888 and 189891 were originally Indian allotments.

11. The lands in 189888 and 189891 were signed over to the United States by the Crow Indians through a treaty dated December 8, 1890, which was ratified by Congress March 3, 1891, and the lands were opened for public settlement on October 12, 1892.

12. In the 1987 Legislative Session, Section 85-2-234 MCA, Final Decrees, was amended by Senate Bill 102. SB 102 stated that the amount of water for direct flow rights such as irrigation rights shall be measured by flow rate unless the Water Judge determines otherwise.

13. These are not direct flow irrigation claims as evidenced by the method of irrigation and hence not susceptible to measurement by flow rate.

CONCLUSIONS OF LAW

I.

The Water Court has jurisdiction to review all objections to Temporary Preliminary Decrees pursuant to Sec. 85-2-233, MCA.

II.

Indian lands become part of the public domain when a cessation treaty is signed by the Indians and then ratified by Congress, not when the land is officially opened up for settlement Cook et al v. Hudson 110 MT 263, 103 P2d 137, (1940).

III.

The date the cessation treaty regarding the land in claims 43C-W-189888 and 189891 was ratified by Congress was March 3, 1891. Hence these claims cannot have a priority earlier than March 3, 1891.

IV.

Pursuant to SB.102 the flow rate amounts should be removed from the abstracts of these claims unless and until the Court rules at some future time that flow rate is a necessary element to adequately administer these rights.

V.

The objections of the DNRC, USDA Forest Service and Harry Bass III Trust are deemed withdrawn.

VI.

The motions of the Court are deemed withdrawn.

VII.

Based upon the evidence presented the following changes should be made to the abstracts of claims as they appear in the Temporary Preliminary Decree of the Stillwater River Basin:

43C-W-189888-00

PRIORITY DATE: February 25, 1894
FLOW RATE: 0
VOLUME: 230.00 afy

Remove remarks regarding volume and priority date and add:

The method of irrigation is natural over-flow and water spreading.

43C-W-189891-00

PRIORITY DATE: March 3, 1891
FLOW RATE: 0

Remove remarks regarding volume and priority date and add:

The method of irrigation is natural over-flow and water spreading.

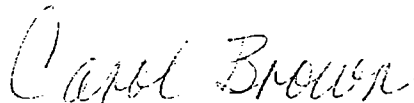
43C-W-189892-00

FLOW RATE: 0

Remove remark regarding volume and add:

The method of irrigation is natural over-flow and water spreading.

DATED this 27 day of November 1988.



Carol Brown
Water Master

CERTIFICATE OF SERVICE

I, Judith A. Salvas, Deputy Clerk of Court of the Montana Water Court, hereby certify that a true and correct copy of the above Master's Report was duly served upon the following persons listed herein, by depositing the same, postage prepaid, in the United States mail.

Margaret deLannoy
%William G. Mouat, Att.
Suite 317
First Federal Savings Bldg.
Billings, MT 59101

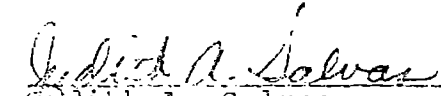
Kenneth Pitt, Special
Asst. U. S. Attorney
P. O. Box 7669
Missoula, MT 59807

Harry W. Bass III Trust
%Leanne Schraudner, Att.
222 East Main, Suite 301
Bozeman, MT 59715

James Madden, Legal Counsel
Mt. Dept. of Natural
Resources & Conservation
1520 East Sixth
Helena, MT 59620

John R. Hill, Jr., Attorney
Department of Justice
1952 Stout St., Drawer 3607
Denver, Colorado 80294

DATED this *22nd* day of November 1988.



Judith A. Salvas
Deputy Clerk of Court

IN THE WATER COURTS OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
STILLWATER RIVER BASIN - 43C



IN THE MATTER OF THE ADJUDICATION OF)
THE EXISTING RIGHTS TO THE USE OF ALL)
THE WATER, BOTH SURFACE AND UNDERGROUND,)
WITHIN THE STILLWATER RIVER DRAINAGE)
AREA, INCLUDING ALL TRIBUTARIES OF THE)
STILLWATER RIVER IN STILLWATER, SWEET)
GRASS, PARK AND CARBON COUNTIES,)
MONTANA.)

Case No. 43C-126
Claim No. 43C-W-189888

STIPULATION

The United States of America, Objector, by and through its undersigned attorneys, William Mouat, as legal counsel for William Mouat and Margaret Delannoy, Claimant, and Leanne M. Schraudner, as legal counsel for the Harry Bass Trust III, Objector, submit the following "STIPULATION" with respect to Claim No. 43C-W-189888:

1. Volume shall be reduced from 564 acre feet to 230 acre feet.
2. Priority date shall be changed from 1883 to February 25, 1894.

All remaining portions of the rights as decreed shall remain as evidenced in the temporary preliminary decree.

When the foregoing corrections are entered into the Preliminary and Final Decrees and with no other changes, except for a reduction in volume or flow rate, in the "Abstract of Water Right" for Water Right No. 43C-W-189888, the Notice of Objection of the United States of America and the Harry Bass Trust III shall be deemed to have been withdrawn.

DATED this 29th day of January, 1987.

William Mouat
WILLIAM MOUAT

William de Lanoy, trustee for
1985 Margaret de Lanoy Living Trust
MARGARET DELANNOY

CLAIMANTS

Leanne M. Schraudner
LEANNE M. SCHRAUDNER
Attorney for Harry Bass Trust III

OBJECTOR

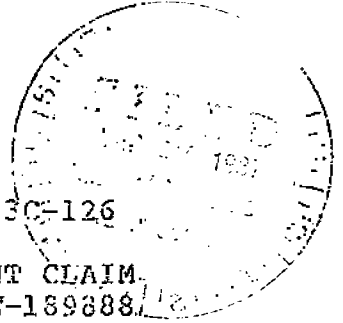
BYRON H. DUNBAR
United States Attorney
District of Montana

By: John R. Hill, Jr. 1/14/87
JOHN R. HILL, JR., Attorney
U.S. Department of Justice
Land & Natural Resources Division
1961 Stout Street, P.O. Drawer 3507
Denver, CO 80294
(303) 844-2892

KENNETH P. PITT
Special Assistant United States Attorney
District of Montana
P.O. Box 7669
Missoula, MT 59807
(406) 329-3066

ATTORNEYS FOR
UNITED STATES OF AMERICA

IN THE WATER COURTS OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
STILLWATER BASIN



* * * * *

IN THE MATTER OF THE ADJUDICATION)
OF THE EXISTING RIGHTS TO THE USE) CASE NO. 43C-126
OF ALL THE WATER, BOTH SURFACE AND)
UNDERGROUND, WITHIN THE STILLWATER) WATER RIGHT CLAIM.
RIVER DRAINAGE AREA, INCLUDING ALL) NCS. 43C-W-189888,
TRIBUTARIES OF THE STILLWATER RIVER) 43C-W-189891
IN STILLWATER, SWEETGRASS, PARK AND) 43C-W-189892
CARBON COUNTIES, MONTANA.)

* * * * *

WITHDRAWAL OF OBJECTION

* * * * *

The 1987 Montana Legislature authorized the Water Court to delete volume for certain water rights in its decrees (SB 102). By Order of June 4, 1987, the Water Court ruled that volume will not be decreed for the above water rights claim(s), unless an interested party makes a motion requesting that volume be considered as a necessary element to adequately administer the right.

The Department of Natural Resources and Conservation objection(s) to the above claim(s) pertained only to volume. Based upon SB 102 and the Water Court's Order of June 4, 1987, the Department of Natural Resources and Conservation, by and through the undersigned attorney, withdraws its objection(s) to the above water rights claim(s).

DATED this 17th day of September, 1987.

By James M. Modt
Department of Natural Resources
and Conservation
1520 East Sixth Avenue
Helena, MT 59620-2301

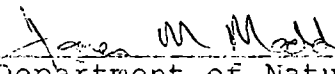
CERTIFICATE OF SERVICE

I, the undersigned attorney for the Department of Natural Resources and Conservation, hereby certify that on the 14th day of ~~August~~^{September}, 1987, a true and accurate copy of the WITHDRAWAL OF OBJECTION was duly served upon all parties or counsel of record, by depositing the same, postage prepaid, in the United States Mail.

William G. Mouat
Attorney at Law
Suite 317 First Federal Savings Building
2929 Third Avenue North
Billings, MT 59101

Ken Pitt
USFS
P.O. Box 7669
Missoula, MT 59801

John Hill, Jr.
U.S. Dept. of Justice
1961 Stout Street
Drawer 3607
Denver, CO 80294



Department of Natural Resources
and Conservation
1520 East Sixth Avenue
Helena, MT 59620-2301

DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION
BILLINGS WATER RIGHTS FIELD OFFICE



TED SCHWINDEN GOVERNOR

1537 AVENUE D — SUITE 352

STATE OF MONTANA

(406) 457-2100

BILLINGS, MONTANA 59102

MEMORANDUM

TO: Jim Madden, Legal Staff
FROM: Charley Carpenter, Adjudication Specialist
DATE: September 26, 1986
SUBJ: Volume - Mouat *43C-126*

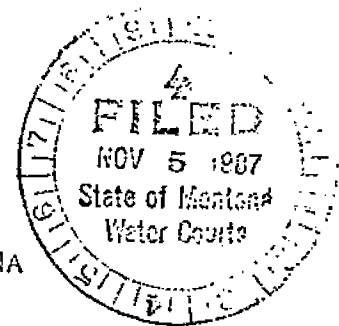
Bill Mouat came in to the Billings Field Office today to discuss DNRC objections to his claims. Claims 43C-W189888, W189891 and W189892 are irrigation claims with DNRC objections to volume. Mr. Mouat explained to me that in all three cases, the method of irrigation is by natural overflow and waterspreading. He indicated that he would be willing to agree in these cases to the volume and flow rate guidelines for this method.

Flow rate is not quantified for natural overflow or waterspreading. The Water Court volume guideline for these methods in Climatic Area 5 is 1.4 acre-feet per year. The guideline volume for the claims would be as follows:

W189888 - 35.00 acre-feet
W189891 - 28.00 acre-feet
W189892 - 7.00 acre-feet

CC/kb

Handwritten initials



IN THE WATER COURTS OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
STILLWATER RIVER BASIN - (43C)

* * * * *

| | |
|---|--------------------|
| IN THE MATTER OF THE ADJUDICATION OF THE) | Case No. 43C-126 |
| EXISTING RIGHTS TO THE USE OF ALL THE) | Claims No. 189888, |
| WATER, BOTH SURFACE AND UNDERGROUND,) | 189891 and |
| WITHIN THE STILLWATER RIVER DRAINAGE) | 189892 |
| AREA, INCLUDING ALL TRIBUTARIES OF THE) | |
| STILLWATER RIVER IN STILLWATER, SWEET) | |
| GRASS, PARK AND CARBON COUNTIES, MONTANA.) | |
|) | |

AFFIDAVIT

WILLIAM G. MOUAT, of lawful age, being first duly sworn on oath deposes and says:

That he is one of the owners of certain water rights in the waters of Basin 43C, in the Stillwater River, Stillwater County, Montana, under Claims No. 189888, 189891 and 189892.

Claim No. 43C-W-189891 (Axtel Creek):

The Temporary Preliminary Decree was 322 acre feet per year. The land irrigated by this stream is rocky and porous and the guidelines for alfalfa would not apply to the area irrigated by this stream because the amount of water needed would be much greater than the amount needed under the guidelines for alfalfa. The volume amount for this claim should be 322 acre feet per year.

Claim No. 43C-W-189892 (Unnamed stream parallel to and South of Axtel Creek):

The Temporary Preliminary Decree was 45.82 acre feet per year. The land irrigated by this stream is rocky and porous and the guidelines for alfalfa would not apply to the area irrigated by this stream because the amount of water needed would be much greater than the amount needed under the guidelines for alfalfa. The volume amount for this claim should be 45.82 acre feet per year.

Claim No. 43C-W-189888 (Silver Creek)

The Temporary Preliminary Decree was 564.00 acre feet per year. On January 28, 1987, I signed a Stipulation, a copy of which is attached hereto, in which I agreed that the volume would be reduced from 564 acre feet to 230 acre feet, and that the priority date would be changed from 1883 to February 25, 1894.

The volume amount for that claim should be 230 acre feet per year.

DATED this 21st day of November, 1987.

William G. Mouat
William G. Mouat

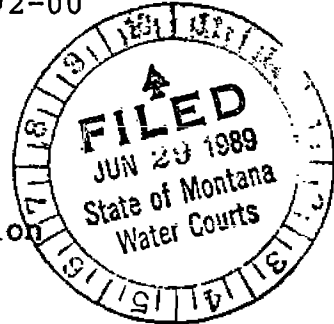
Subscribed and sworn to before me this 21st day of November, 1987.

Margaret M. Childs
Notary Public for the State of Montana.
Residing at Billings, Montana. My Commission expires August 30, 1988.

IN THE WATER COURTS OF THE STATE OF MONTANA
 YELLOWSTONE DIVISION
 STILLWATER RIVER BASIN (43C)

* * * * *

| | |
|---|------------------|
| IN THE MATTER OF THE ADJUDICATION OF) | |
| THE EXISTING RIGHTS TO THE USE OF ALL) | CASE NO. 43C-126 |
| THE WATER, BOTH SURFACE AND UNDERGROUND,)) | CLAIM NO. |
| WITHIN THE STILLWATER RIVER DRAINAGE) | 43C-W-189888-00 |
| AREA, INCLUDING ALL TRIBUTARIES OF THE) | 43C-W-189891-00 |
| STILLWATER RIVER IN STILLWATER, SWEET) | 43C-W-189892-00 |
| GRASS, PARK AND CARBON COUNTIES,) | |
| MONTANA.) | |



CLAIMANT: William Mouat, Margaret deLannoy

OBJECTOR: Department of Natural Resources & Conservation
 United States Department of Agriculture,
 Forest Service, Harry W. Bass III Trust
 ON MOTION OF THE WATER COURT

AMENDED MASTER'S REPORT

FINDINGS OF FACT

1. On November 22, 1988, the Master's Report was issued in the above entitled case with Findings and Conclusions concerning the volumes on these claims as follows:

| | |
|-----------------|-----------|
| 43C-W-189888-00 | 230 AFY |
| 43C-W-189891-00 | 322 AFY |
| 43C-W-189892-00 | 45.82 AFY |

2. On December 7, 1988, the Court received an objection to the Master's Report from the Montana Department of Natural Resources and Conservation (DNRC) contesting the volumes and requesting that they be decreed as consumptive volumes as follows:

| | |
|-----------------|--------|
| 43C-W-189888-00 | 35 AFY |
| 43C-W-189891-00 | 28 AFY |
| 43C-W-189892-00 | 7 AFY |

3. On December 28, 1988, the Court received claimants response to DNRC's objection to the Master's Report.

4. On February 15, 1989, the Court received DNRC's Brief in Support of Quantification of Water Spreading Systems by Consumptive Volume.

5. The DNRC bases its contentions on the claims examination rules which serve as guidelines in claims examination. Consumptive volumes for alfalfa represent the guidelines volumes for water spreading systems based on climatic area. However, the rules are only guidelines as indicated by the volume remark that appears on each of these claims "Standards on volumes found in the findings of fact are only guidelines. Claimed volumes may be modified by the Court on individual objection."

6. Claims of existing rights are considered prima facie proof of their contents until overcome by objection and weight of evidence, pursuant to Sec. 85-2-227 MCA.

7. The claimant has produced evidence of soil type and climate area in support of volume amounts in excess of the guideline amounts.

8. While guideline consumptive volumes are useful where conveyance losses are difficult or impossible to ascertain there is no rule that demands that only consumptive volumes be used where the parties have made the effort to ascertain the actual volumes historically used.

9. The DNRC contends that the Court should deviate from the consumptive volume guideline only where a diversion volume has been measured by field investigation. However, the

Water Court is not limited to the acceptance of only one type of evidence, but may consider all evidence in its decisions Sec. 85-2-231(d), MCA.

10. The preponderance of the evidence favors granting volumes that include conveyances losses. However, in consideration of consistency the claims should be remarked that the volume amounts include conveyance losses.

CONCLUSIONS OF LAW

I.

The Water Court has jurisdiction to review all objections to Temporary Preliminary Decrees pursuant to Sec. 85-2-233, MCA.

II.

Based upon the foregoing, the following modification and no other should be made to the Master's Report in Case 43C-126:

Add to Conclusions of Law No. VII., page 4 claims 43C-W-189888-00, 189891-00 and 189892-00 the following remark:

The volume amount represents the consumptive use and conveyance losses.

DATED this 29th day of June 1989.



Carol Brown
Water Master

CERTIFICATE OF SERVICE

I, Judith A. Salvas, Deputy Clerk of Court of the Montana Water Court, hereby certify that a true and correct copy of the above Amended Master's Report was duly served upon the following persons listed herein, by depositing the same, postage prepaid, in the United States mail.

Margaret deLannoy
%William G. Mouat, Att.
Suite 317
First Federal Savings Bldg.
Billings, MT 59101


Kenneth Pitt, Special
Asst. U. S. Attorney
P. O. Box 7669
Missoula, MT 59807

Harry W. Bass III Trust
%Leanne Schraudner, Att.
222 East Main, Suite 301
Bozeman, MT 59715

James Madden, Legal Counsel
Mt. Dept. of Natural
Resources & Conservation
1520 East Sixth
Helena, MT 59620

John R. Hill, Jr., Attorney
Department of Justice
1962 Stout St., Drawer 3607
Denver, Colorado 80294

DATED this *30th* day of June 1989.


Judith A. Salvas
Deputy Clerk of Court