

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
YELLOWSTONE RIVER FROM BRIDGER CREEK TO THE CLARKS FORK
YELLOWSTONE BASIN (43QJ)

* * * * *

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

Case No. 43QJ-84
43QJ-W-197612-00

FILED

APR 22 1992

Montana Water Court

CLAIMANT Yvonne Byrne (Former Owner)
Gary Everson, Larry Hart (Present Owners)

ON MOTION OF THE WATER COURT

OBJECTOR: Montana Dept. of Natural Resources & Conservation
United States of America (Bureau of Reclamation)

MASTER'S REPORT

STATEMENT OF THE CASE

On February 3, 1986 the extended objection period for the Yellowstone River Basin from Bridger Creek to the Clark's Fork of the Yellowstone, Basin 43QJ, closed. After closing of the objection period, the Montana Department of Natural Resources and Conservation (DNRC) notified the Water Court that numerous water right claims that should have been decreed in Basin 43QJ were erroneously decreed in other basins.

This particular claim, 43QJ-W-197612-00, was one of these "misbasined" claims. It was initially decreed incorrectly in Basin 43D.

On May 20, 1986, Chief Water Judge W. W. Lessley ordered the DNRC to mail notice of the "misbasined" claims to all parties

named in the Basin 43QJ Preliminary Decree, and to evidence this mailing with a general certificate of mailing executed by the DNRC. The notice of misbasined claims directed that such claims would be inserted in the Basin 43QJ Preliminary Decree and further ordered that all claimants had until 5:00 P.M. on August 18, 1986 to file objections to these claims.

The abstracts of these claims were inserted in the Preliminary Decree as directed. The mailing was completed and the certificate of mailing dated June 26, 1986 was thereafter filed with the Court.

In light of the foregoing, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Water right claim 43QJ-W-197612-00 was called in On Motion of the Water Court due to a gray area remark concerning priority date and also as a misbasined claim.

2. The claimed priority date is December 31, 1863. During the DNRC's review of this claim, the place of use appeared to be located on lands belonging to the Crow Indian Reservation at the time of the claimed priority date. These lands were subsequently ceded from the reservation pursuant to a treaty ratified by Congress on March 3, 1891. See Cook et. al. v. Hudson, 110 Mont. 263, 103 P.2d 137 (1940).

3. On March 31, 1992, the claimants filed an Affidavit with the Water Court attesting that the correct priority date of this claim is March 3, 1891.

4. Pursuant to the Water Court's order of May 20, 1986, an abstract of this claim was inserted into the Basin 43QJ Preliminary Decree and notice of its insertion was provided to all water users named in the Preliminary Decree.

5. No objections were filed to this claim after the notice was provided.

CONCLUSIONS OF LAW

I.

The Montana Water Court has jurisdiction over all matters relating to the determination of existing water rights and may consider a matter within the Court's jurisdiction on its own motion. Mont. Code Ann. §3-7-224.

II.

Section 85-2-232 Mont. Code Ann. provides that the water judge shall mail a notice of availability of the Preliminary Decree to each person with a claim in the decreed basin. Section 85-2-233 provides for the filing of objections and subsequent hearings on the decree. The Notice of May 20, 1986 and subsequent mailing satisfy the requirements of these statutes.

III.

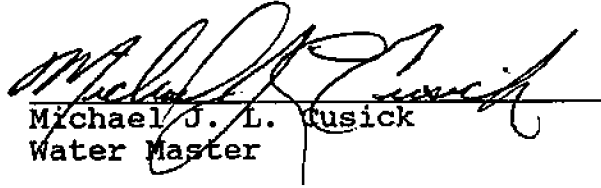
Upon review of the Affidavit it appears that it is proper and is accepted by this Court.

IV.

The changes to priority date stated in the Findings of Fact should be made to correct the Temporary Preliminary Decree in the Yellowstone River Basin from Bridger Creek to the Clark's Fork

of the Yellowstone River (Basin 43QJ).

DATED this 21st day of April, 1992.


Michael J. L. Tusick
Water Master

CERTIFICATE OF SERVICE

I, Lori M. Burnham, 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 persons listed below by depositing the same, postage prepaid, in the United States mail.

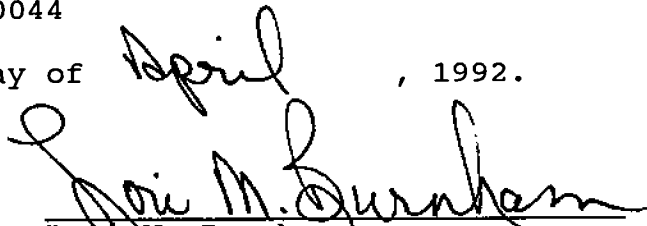
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DATED this 22 day of April, 1992.


Lori M. Burnham
Clerk of Court