

Montana Water Court  
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**FILED**  
**DEC 28 2016**  
**Montana Water Court**

MONTANA WATER COURT, UPPER MISSOURI DIVISION  
BEAVERHEAD RIVER - BASIN 41B

\*\*\*\*\*

CLAIMANTS: James C. Kennedy; Robert L. Martin; Lois Davis;  
Van L. Davis; State of Montana Board of Land  
Commissioners

OBJECTORS: United States of America (Bureau of Reclamation);  
Robert L. Martin; State of Montana, Board of Land  
Commissioners

NOTICE OF INTENT TO APPEAR: Open A Ranch Inc.; Water  
Users Irrigation Co.

**CASE 41B-7**  
41B 194264-00  
41B 194266-00  
41B 194267-00  
41B 194268-00  
41B 194269-00

**Implied Claims:**  
**41B 30107014**  
**41B 30107015**  
**41B 30107016**

**ORDER AMENDING AND ADOPTING MASTER'S REPORT**

This case was the subject of a Master's Report issued on September 23, 2016. The report received objections from the United States Bureau of Reclamation and the Water Users Irrigation Company. On October 19, 2016, the Water Court issued an order setting a response filing deadline to the objections. Responses were filed by Montana State Board of Land Commissioners (State Lands) and James C. Kennedy.

Claims 41B 30107014, 41B 30107015, and 41B 30107016

The Master's Report recommended implying claims 41B 30107014, 41B 30107015, and 41B 30107016 to represent irrigation on land owned by State Lands. The recommended priority date for these claims, matched the corresponding priority dates on the parent claims. The Bureau of Reclamation objected to the priority dates asserting State Lands had previously claimed a June 30, 1973 priority date for all three implied claims. In its response to the objection, State Lands agreed that the proper priority date

for all three claims is June 30, 1973. Therefore, the Master's Report and claim abstracts are amended to reflect this priority date:

|              |                              |                      |
|--------------|------------------------------|----------------------|
| 41B 30107014 | <del>February 26, 1918</del> | <u>June 30, 1973</u> |
| 41B 30107015 | <del>October 25, 1905</del>  | <u>June 30, 1973</u> |
| 41B 30107016 | <del>October 25, 1905</del>  | <u>June 30, 1973</u> |

Claim 41B 194264-00

Claim 41B 194268-00 represents an October 18, 1871 irrigation claim from the Beaverhead River. The claim received an issue remark indicating it duplicates claim 41B 194264-00. On September 28, 2015, owner James C. Kennedy withdrew claim 41B 194268-00 thereby resolving the duplicate claim issue.

The Water Users Irrigation Company nonetheless objected to the claim. The objection asserts the Master's Report does not clearly state the claim was withdrawn because it duplicated claim 41B 194268-00. Water Users Irrigation Company concern is that the "withdrawn" designation could allow a subsequent owner to petition the court to reinstate the claim. In his response to the objection, Mr. Kennedy stated the claim was withdrawn to resolve the duplicate claim issue never to be revived. Mr. Kennedy agreed the claim should be clearly designated as terminated.

The Master's conclusion of law 5, stating the claim should be withdrawn, is incorrect. The claim has been withdrawn, it should now be dismissed by the Court. (Dismissed is the preferred term of art in this adjudication rather than terminated.) The report is amended accordingly. In addition, Water Court policy placed a claim status designation of "withdrawn" on claims that are voluntarily withdrawn by a claimant. This designation serves little purpose and leads to the very concern expressed by Water Users Irrigation Company. Therefore, the claim status on the abstract for claim 41B 194268-00 shall be changed to DISMISSED. The following standard remark shall be added to the claim:

**THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.**

The Water Court will no longer use "withdrawn" as a claim status. A claim shall be designated as either active or dismissed. The fact that a claim was withdrawn does not

indicate the ability to reinstate that claim without proper notice and compliance with the requirements for reinstating any claim.

Amending conclusion of law 5 and correcting the status designation on the claim abstract resolves the Water Users Irrigation Company objections.

Pursuant to Rule 53(e), Montana Rules of Civil Procedure, the Court ADOPTS the Master's Report as Amended by this Order. Water right claim abstracts for claims 41B 30107014, 41B 30107015, 41B 30107016, and 41B 194268-00 are served with this order to confirm the amendments to the claims have been incorporated into the state's centralized computer record system.

DATED this *28* day of *December*, 2016.



Douglas Ritter  
Associate Water Judge

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**Service List updated 12/19/16**

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM**

**BEAVERHEAD RIVER**

**BASIN 41B**

**IMPORTANT NOTICE**

**\*\*\*THIS WATER RIGHT CLAIM HAS BEEN DISMISSED\*\*\***

**AN ASTERISK (\*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.**

**Water Right Number: 41B 194268-00 STATEMENT OF CLAIM**

**Version: 2 -- POST DECREE**

**Status: DISMISSED**

**Owners: JAMES C KENNEDY  
PO BOX 530255  
ATLANTA, GA 30353**

**Priority Date:**

**Type of Historical Right:**

**Purpose (use): IRRIGATION**

**Flow Rate:**

**Volume:**

**Source Name: BEAVERHEAD RIVER**

**Source Type: SURFACE WATER**

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.