

Montana Water Court
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MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Emily P. Berg Trust; Big Sky Moonrise LLC; Nancy Perkins Docherty; Mary L. Perkins; Sarah E. Perkins; Warren K. & Ellavina T. Perkins Trust; United States of America (USDA Forest Service); Van Dyke Ranch LLC

CASE 43B-0536-R-2021
43B 194730-00
43B 30160074

OBJECTORS: Emily P. Berg Trust; Big Sky Moonrise LLC; Nancy Perkins Docherty; Mary L. Perkins; Sarah E. Perkins; Warren K. Perkins; United States of America (USDA Forest Service)

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 may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail 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

Big Sky Moonrise LLC, the United States of America (USDA Forest Service), Warren K. Perkins, Sarah E. Perkins, Nancy Perkins Docherty, Emily P. Berg Trust, and Mary L. Perkins objected to this claim.

On February 27, 2023 the Stipulation To Resolve United States' Objection was filed requesting the split of this claim into one claim for Emily P. Berg Trust, Big Sky Moonrise LLC, Nancy Perkins Docherty, Mary L. Perkins, Sarah E. Perkins, Warren K. & Ellavina T. Perkins Trust, and Van Dyke Ranch LLC, and a second claim for the United States of America (USDA Forest Service). This Stipulation is signed by counsels for United States of America (USDA Forest Service), Big Sky Moonrise LLC, and Van Dyke Ranch LLC. On March 3, 2023 the Stipulation signature page signed by counsel for Emily P. Berg Trust, Nancy Perkins Docherty, Mary L. Perkins, Sarah E. Perkins, and Warren K. & Ellavina T. Perkins Trust was filed. [FCE documents 22.00 and 23.00]

On January 11, 2024 a Settlement Agreement was filed resolving the Big Sky Moonrise LLC objection and the Emily P. Berg Trust, Nancy Perkins Docherty, Mary L. Perkins, Sarah E. Perkins, and Warren K. Perkins objections. [FCE document 44.00] The Declaration of Nancy Perkins Docherty, Declaration of Van Dyke Ranch LLC (Gary Van Dyke), and Declaration Of Becky Hall are attached to and provide evidentiary support for the Settlement Agreement.

The settlement documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

The Montana Water Court has jurisdiction over all matters relating to the determination of existing water rights. Section 3-7-224, MCA.

The Water Court may split a claim with multiple owners into separate claims upon request of all of the claimants prior to issuance of the final decree. Rule 26, W.R.Adj.R.

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. The Preliminary Decree states that the point of diversion for this livestock direct from source claim is:

| <u>QTRSEC</u> | <u>SEC</u> | <u>TWP</u> | <u>RGE</u> | <u>COUNTY</u> |
|---------------|------------|------------|------------|---------------|
| | 32 | 6S | 8E | PARK |
| | 5 | 7S | 8E | PARK |
| SWSWSW | 4 | 7S | 8E | PARK |
| | 9 | 7S | 8E | PARK |
| NENWSE | 29 | 6S | 8E | PARK |

and the place of use is:

| <u>QTRSEC</u> | <u>SEC</u> | <u>TWP</u> | <u>RGE</u> | <u>COUNTY</u> |
|---------------|------------|------------|------------|---------------|
| | 32 | 6S | 8E | PARK |
| NENWSE | 29 | 6S | 8E | PARK |
| | 5 | 7S | 8E | PARK |
| | 9 | 7S | 8E | PARK |
| | 4 | 7S | 8E | PARK |

Language in the Stipulation To Resolve Unites States’ Objection, Declaration of Nancy Perkins Docherty, Declaration of Van Dyke Ranch LLC (Gary Van Dyke), and Declaration Of Becky Hall all state that stockwatering occurs along the entire course of Sixmile Creek as it traverses each claimant’s or claimants’ property. Prior to splitting this claim, the point of diversion and place of use should be:

| <u>QTRSEC</u> | <u>SEC</u> | <u>TWP</u> | <u>RGE</u> | <u>COUNTY</u> |
|---------------|------------|------------|------------|---------------|
| | 32 | 6S | 8E | PARK |
| | 5 | 7S | 8E | PARK |
| N2N2N2 | 5 | 7S | 8E | PARK |
| SWSWSW | 4 | 7S | 8E | PARK |
| | 9 | 7S | 8E | PARK |
| SENE | 29 | 6S | 8E | PARK |
| SEWNNE | 29 | 6S | 8E | PARK |
| NWSE | 29 | 6S | 8E | PARK |
| SWSE | 29 | 6S | 8E | PARK |
| SESESW | 29 | 6S | 8E | PARK |

2. Claim 43B 194730-00 should be modified to represent only the Emily P. Berg Trust, Big Sky Moonrise LLC, Nancy Perkins Docherty, Mary L. Perkins, Sarah E. Perkins, Warren K. & Ellavina T. Perkins Trust, and Van Dyke Ranch LLC portion of the claimed right. Claim 43B

30160074 should be generated for the United States of America (USDA Forest Service) portion of the claimed right.

3. Claim 43B 194370-00 should be modified as follows: 1) the ownership should be modified by removing United States of America (USDA Forest Service) as a co-owner, 2) the point of diversion and place of use should be:

| <u>QTRSEC</u> | <u>SEC</u> | <u>TWP</u> | <u>RGE</u> | <u>COUNTY</u> |
|---------------|------------|------------|------------|---------------|
| | 32 | 6S | 8E | PARK |
| N2N2N2 | 5 | 7S | 8E | PARK |
| SWSWSW | 4 | 7S | 8E | PARK |
| | 9 | 7S | 8E | PARK |
| SENE | 29 | 6S | 8E | PARK |
| SESWNE | 29 | 6S | 8E | PARK |
| NWSE | 29 | 6S | 8E | PARK |
| SWSE | 29 | 6S | 8E | PARK |
| SESESW | 29 | 6S | 8E | PARK |

and 3) the following remark should be added: THE POINTS OF DIVERSION AND PLACES OF USE ARE LOCATED ENTIRELY ON PRIVATE LAND.

The Preliminary Decree also includes the following notice remark:

POINT OF DIVERSION AND PLACE OF USE WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

This remark provides notice of these changes made prior to issuance of the Preliminary Decree. The remark does not raise unresolved issues which need to be addressed. There are no proceedings required for this remark. The remark should be removed as having served its notice purpose.

4. The elements of claim 43B 30160074 should be same as 43B 194370-00 except: 1) the owner should be United States of America (USDA Forest Service), 2) the point of diversion and place of use should be:

| <u>QTRSEC</u> | <u>SEC</u> | <u>TWP</u> | <u>RGE</u> | <u>COUNTY</u> |
|---------------|------------|------------|------------|---------------|
| | 5 | 7S | 8E | PARK |

and 3) the following remark should be added: THE POINT OF DIVERSION AND PLACE OF USE INCLUDE THE ENTIRE REACH OF SIXMILE CREEK WITHIN SECTION 5 T7S R8E EXCEPT THAT PORTION ON PRIVATE LAND IN SIXMILE AND MONTANA BAR PLACER #8838.

CONCLUSION OF LAW

The settlements filed by the parties are sufficient to contradict and overcome the prima facie claim, and provide sufficient information to split the claim in order to reflect the divided interests.

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 Preliminary Decree for this Basin and to split claim 43B 194730-00 as requested by the claimants. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes to 43B 194730-00 and generation of split claim 43B 30160074 have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 194730-00 STATEMENT OF CLAIM

Version: 3 -- SPLIT POST DECREE

Status: ACTIVE

Owners: NANCY PERKINS DOCHERTY
8327 FERGUSON RD
STREETSBORO, OH 44241-5705

MARY L PERKINS
7532 33RD AVE NE
SEATTLE, WA 98115

SARAH E PERKINS
741 S FARM RD #197
SPRINGFIELD, MO 65809

BERG EMILY P TRUST
8327 FERGUSON RD
STREETSBORO, OH 44241-5705

BIG SKY MOONRISE LLC
% COUCH, DAVID
5826 SAMET DR
HIGH POINT, NC 27265-3660

PERKINS, WARREN K & ELLAVINA T TRUST
PERKINS WARREN K & ELLAVINA T TRUSTEES
3861 FOREST BROOK ST
FLAGSTAFF, AZ 86004

VAN DYKE RANCH, LLC
5117 DALECARLIA DR
BETHESDA, MD 20816

Priority Date: DECEMBER 31, 1909

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING 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: SIXMILE CREEK

Source Type: SURFACE WATER

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 | | | 32 | 6S | 8E | PARK |
| Period of Diversion: | JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: | LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 2 | | N2N2N2 | 5 | 7S | 8E | PARK |
| Period of Diversion: | JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: | LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 3 | | SWSWSW | 4 | 7S | 8E | PARK |
| Period of Diversion: | JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: | LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 4 | | | 9 | 7S | 8E | PARK |
| Period of Diversion: | JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: | LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 5 | | SENE | 29 | 6S | 8E | PARK |
| Period of Diversion: | JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: | LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 6 | | SESWNE | 29 | 6S | 8E | PARK |
| Period of Diversion: | JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: | LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 7 | | NWSE | 29 | 6S | 8E | PARK |
| Period of Diversion: | JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: | LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 8 | | SWSE | 29 | 6S | 8E | PARK |
| Period of Diversion: | JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: | LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 9 | | SESESW | 29 | 6S | 8E | PARK |
| Period of Diversion: | JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: | LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 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 | | | | 32 | 6S | 8E | PARK |
| 2 | | | N2N2N2 | 5 | 7S | 8E | PARK |
| 3 | | | SWSWSW | 4 | 7S | 8E | PARK |
| 4 | | | | 9 | 7S | 8E | PARK |
| 5 | | | SENE | 29 | 6S | 8E | PARK |
| 6 | | | SESWNE | 29 | 6S | 8E | PARK |
| 7 | | | NWSE | 29 | 6S | 8E | PARK |
| 8 | | | SWSE | 29 | 6S | 8E | PARK |
| 9 | | | SESESW | 29 | 6S | 8E | PARK |

Remarks:

THE POINTS OF DIVERSION AND PLACES OF USE ARE LOCATED ENTIRELY ON PRIVATE LAND.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 30160074 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date: DECEMBER 31, 1909

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

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: SIXMILE CREEK

Source Type: SURFACE WATER

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 | | | 5 | 7S | 8E | PARK |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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 | | | | 5 | 7S | 8E | PARK |

Remarks:

THE POINT OF DIVERSION AND PLACE OF USE INCLUDE THE ENTIRE REACH OF SIXMILE CREEK WITHIN SECTION 5 T7S R8E EXCEPT THAT PORTION ON PRIVATE LAND IN SIXMILE AND MONTANA BAR PLACER #8838.