

Montana Water Court
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FILED
05/23/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0316-R-2022
Lambert, Kathryn
14.00

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

CLAIMANTS: John S. Jr Brandis Non-Exempt Spousal Trust; Bert
Otis; Kristine L. Otis

OBJECTORS: Trout Unlimited

NOTICE OF INTENT TO APPEAR: 360 Holdings LLC; Arthur L. Jr &
Catherine L. Burns Trust; Christopher J. Jensen;
Lydia A. Jensen; Martin C. Malone; James R. Melin;
Petrich Family Limited Partnership; Gordon R.
Rigler; Sitka Ranch LLC; South Fork LLC

CASE 43B-0316-R-2022

43B 5861-00

43B 5862-00

43B 5863-00

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

Trout Unlimited objected to each of these claims. 360 Holdings LLC, Arthur L. Jr & Catherine L. Burns Trust, Christopher J. Jensen, Lydia A. Jensen, Martin C. Malone, James R. Melin, Petrich Family Limited Partnership, Gordon R. Rigler, Sitka Ranch LLC, and South Fork LLC filed a joint notice of intent to appear for each claim. In addition, the Preliminary Decree for each of these claims states that the ditch name is Mill Creek Flat Ditch but the point of diversion legal description is for Upland Ditch.

On February 27, 2023 John S. Jr Brandis Non-Exempt Spousal Trust, Bert Otis, Kristine L. Otis, and Trout Unlimited filed their Stipulation To Resolve Objections. On March 3, 2023 360 Holdings LLC, Arthur L. Jr & Catherine L. Burns Trust, Christopher J. Jensen, Lydia A. Jensen, Martin C. Malone, James R. Melin, Petrich Family Limited Partnership, Gordon R. Rigler, Sitka Ranch LLC, and South Fork LLC filed their Withdrawal Of Notice Of Intent To Appear. On April 27, 2023 Bert Otis, Kristine L. Otis, and John S. Jr Brandis Non-Exempt Spousal Trust, filed their Notice Of Clarification Of Point Of Diversion And Ditch Name. These settlement documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

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. For claim 43B 5861-00, the Preliminary Decree states that the period of diversion

and period of use are each APRIL 1 TO JULY 15. Each should be MAY 1 TO JULY 15.

2. For claims 43B 5862-00 and 43B 5863-00, the following remark should be added as requested in the Stipulation:

PURSUANT TO THE FEBRUARY 27, 2023 STIPULATION IN THE CLAIM FILE, CLAIMANTS AGREE TO CURTAIL IRRIGATION ON AUGUST 15TH OF EACH YEAR TO A MAXIMUM OF 178.1 ACRES TO REFLECT THE ACTUAL HISTORICALLY-IRRIGATED ACREAGE ASSOCIATED WITH THIS WATER RIGHT. SEE STIPULATION FILED 2-27-23 IN CASE 43B-0316-R-2022.

3. For all three claims, the Preliminary Decree states that the Ditch Name is MILL CREEK FLAT DITCH but the point of diversion legal description is for UPLAND DITCH. The point of diversion legal description should be corrected from the NENENW section 3, T6S, R9E, PARK to the NESWNE section 3, T6S, R9E, PARK.

4. For all three claims, the Preliminary Decree includes the following remark:

POINT OF DIVERSION WAS 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.

The remarks should be removed as having served their notice purposes.

CONCLUSION OF LAW

The settlement documents filed by the parties are sufficient to contradict and overcome the prima facie claims.

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. A Post Decree Abstract of Water Right Claim for each 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 USPS Mail:

John S. Jr Brandis Non-Exempt Spousal Trust
Bert Otis
Kristine L. Otis
PO Box 60
Emigrant, MT 59027
(406) 333-4802 H

Service via Email:

Meg Casey
321 E Main ST Ste 411
Bozeman, Mt 59715-4797
(406)599-8666 W
mcasey@tu.org

Benjamin Sudduth
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1050 East Main St Ste 3B
PO Box 507
Bozeman, MT 59771-0507
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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 5861-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:

BERT OTIS
PO BOX 60
EMIGRANT, MT 59027

KRISTINE L OTIS
PO BOX 60
EMIGRANT, MT 59027

BRANDIS JOHN S JR NON-EXEMPT SPOUSAL TRUST
PO BOX 60
EMIGRANT, MT 59027 0060

Priority Date: JUNE 4, 1963

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: MULTIPLE METHODS

Flow Rate: 5.00 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 178.10

Source Name: MILL 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		NESWNE	3	6S	9E	PARK

Period of Diversion: MAY 1 TO JULY 15

Diversion Means: HEADGATE

Ditch Name: MILL CREEK FLAT DITCH

Period of Use: MAY 1 TO JULY 15

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	178.10		S2	25	5S	8E	PARK

Total: 178.10

Remarks:

AUTHORIZATION TO CHANGE ISSUED 06/13/1988 FOR CHANGE IN POINT OF DIVERSION AND PLACE OF USE.
NOTICE OF COMPLETION DUE 11/30/1990.

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

Water Right Number: 43B 5862-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:

BERT OTIS
PO BOX 60
EMIGRANT, MT 59027

KRISTINE L OTIS
PO BOX 60
EMIGRANT, MT 59027

BRANDIS JOHN S JR NON-EXEMPT SPOUSAL TRUST
PO BOX 60
EMIGRANT, MT 59027 0060

Priority Date: APRIL 1, 1883

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: MULTIPLE METHODS

Flow Rate: 336.60 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 178.10

Source Name: MILL 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		NESWNE	3	6S	9E	PARK

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: MILL CREEK FLAT DITCH

Period of Use: APRIL 1 TO OCTOBER 15

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	178.10		S2	25	5S	8E	PARK

Total: 178.10

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

5862-00

5864-00

PURSUANT TO THE FEBRUARY 27, 2023 STIPULATION IN THE CLAIM FILE, CLAIMANTS AGREE TO CURTAIL IRRIGATION ON AUGUST 15TH OF EACH YEAR TO A MAXIMUM OF 178.1 ACRES TO REFLECT THE ACTUAL HISTORICALLY-IRRIGATED ACREAGE ASSOCIATED WITH THIS WATER RIGHT. SEE STIPULATION FILED 2-27-2023 IN CASE 43B-0316-R-2022.

AUTHORIZATION TO CHANGE ISSUED 06/13/1988 FOR CHANGE IN POINT OF DIVERSION AND PLACE OF USE. NOTICE OF COMPLETION DUE 11/30/1990. SEE 43B 5861-00.

LEASE AUTHORIZATION TO CHANGE THE POINT, PLACE, AND PURPOSE OF USE ISSUED 01/27/1993 TO THE DEPARTMENT OF FISH, WILDLIFE & PARKS. SEE 43B 5862-00.

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

Water Right Number: 43B 5863-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:

BERT OTIS
PO BOX 60
EMIGRANT, MT 59027

KRISTINE L OTIS
PO BOX 60
EMIGRANT, MT 59027

BRANDIS JOHN S JR NON-EXEMPT SPOUSAL TRUST
PO BOX 60
EMIGRANT, MT 59027 0060

Priority Date: MAY 1, 1901

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: MULTIPLE METHODS

Flow Rate: 2.88 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 178.10

Source Name: MILL 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		NESWNE	3	6S	9E	PARK

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: MILL CREEK FLAT DITCH

Period of Use: APRIL 1 TO OCTOBER 15

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	178.10		S2	25	5S	8E	PARK

Total: 178.10

Remarks:

PURSUANT TO THE FEBRUARY 27, 2023 STIPULATION IN THE CLAIM FILE, CLAIMANTS AGREE TO CURTAIL IRRIGATION ON AUGUST 15TH OF EACH YEAR TO A MAXIMUM OF 178.1 ACRES TO REFLECT THE ACTUAL HISTORICALLY-IRRIGATED ACREAGE ASSOCIATED WITH THIS WATER RIGHT. SEE STIPULATION FILED 2-27-2023 IN CASE 43B-0316-R-2022.

AUTHORIZATION TO CHANGE ISSUED 06/13/1988 FOR CHANGE IN POINT OF DIVERSION AND PLACE OF USE. NOTICE OF COMPLETION DUE 11/30/1990. SEE 43B 5861-00.

LEASE AUTHORIZATION TO CHANGE THE POINT, PLACE, AND PURPOSE OF USE ISSUED 01/27/1993 TO THE DEPARTMENT OF FISH, WILDLIFE & PARKS. SEE 43B 5862-00.