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FILED
AUG 17 2022
Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
YELLOWSTONE RIVER BELOW POWDER RIVER (BASIN 42M)

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
FOR THE INTERLOCUTORY DECREE OF
YELLOWSTONE RIVER BELOW POWDER RIVER
-BASIN 42M-**

The Preliminary Decree for the Yellowstone River below Powder River (Basin 42M) was issued on January 24, 2014. Objections filed to claims in the Preliminary Decree and issue remarks decreed on the claims in the Preliminary Decree have been addressed and resolved.

These Findings of Fact and Conclusions of Law are issued for inclusion in the Interlocutory Decree for the Yellowstone River below Powder River (Basin 42M) as authorized by §§ 3-7-224(2), 85-2-231, MCA.

FINDINGS OF FACT

DESCRIPTION OF BASIN

1. Basin 42M encompasses the Yellowstone River below Powder River and its tributaries as well as groundwater located within Basin 42M. The boundaries of Basin 42M are outlined on the attached map. Although this Decree includes water rights within the hydrologic boundaries of Basin 42M, it does not include all the water rights in the Basin. The purpose of this Decree is to adjudicate water rights not included in the prior Decree in Basin 42M.

DECREE ABSTRACTS AND INDEX

2. In addition to these Findings and Conclusions, this Decree consists of abstracts for the claims included in the decree. Accompanying the Decree are six Indexes

designed to facilitate research on water rights included in the Decree. The six Indexes are as follows:

- Water Right Claim Identification Number Index
- Owner Name Index
- Priority Date Index
- Point of Diversion Index
- Source Name Index
- Issue Remark Index

3. CD copies of the Decree and six Indexes are located at the Department of Natural Resources and Conservation (DNRC) Glasgow Regional Office, the DNRC Water Rights Adjudication Office in Helena, and the Montana Water Court in Bozeman. This information is also available on the DNRC's Water Rights Adjudication webpage.

UNRESOLVED FACTUAL AND LEGAL ISSUES

4. The objection period allows interested parties to raise issues regarding ONLY the water rights in this decree. Issues may also be raised by the Water Court on its own initiative. Rule 8, W.R.Adj.R.

Unresolved factual and legal issues have been noted by issue remarks on claim abstracts. The Issue Remark Index combines the issue remarks into a list arranged numerically by water right claim number. Searching the Issue Remark Index by water right claim number will identify issue remarks on individual claim abstracts. Objections may be filed to claims with issue remarks. Issue remarks not resolved through the objection process will be resolved pursuant to § 85-2-248, MCA.

Water users within this Basin and other interested persons will be mailed a Notice of Entry of Interlocutory Decree and Notice of Availability contemporaneously with the filing of these Findings and Conclusions. The Notice of Availability explains the objection process and sets a deadline for filing objections with the Water Court.


CONCLUSIONS OF LAW

1. This is a general adjudication of existing water rights. An existing water right is a right to the use of water that is protected under the law as it existed prior to July 1, 1973. Section 85-2-102(13), MCA.

2. Certain claims were exempt from the statement of claim filing process but could be voluntarily filed. Section 85-2-222, MCA (1979). These exempt rights were for stock or domestic uses from instream or groundwater sources. In 2013, the Montana Legislature created a process to file claims for existing water rights that were exempt from filing in the statewide water rights adjudication. Section 85-2-222(2), MCA.

3. The Montana Water Court has jurisdiction to enter an Interlocutory Decree for the Yellowstone River below Powder River (Basin 42M) pursuant to Title 85, Chapter 2, Montana Code Annotated. *Ariz. v. San Carlos Apache Tribe*, 463 U.S. 545, 103 S. Ct. 3201 (1983); *State ex rel. Greely v. Confederated Salish and Kootenai Tribes*, 219 Mont. 76, 712 P.2d 754 (1985).

4. These Findings of Fact, Conclusions of Law, and abstracts define these existing water rights under Montana law in Basin 42M and comprise an Interlocutory Decree in accordance with § 85-2-231, MCA, and Rule 4, W.R.Adj.R.


Digitally
signed by
Russ McElyea

Russ McElyea
Chief Water Judge

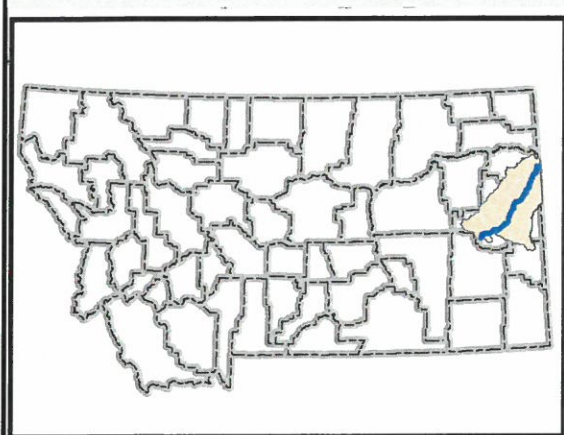
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Basin 42M

Yellowstone River, Below Powder River



Legend

- Yellowstone River
- Streams
- Town/City
- 42M Basin Boundary
- Counties
- Interstate
- State Highway



1:900,000

Map Prepared 07/28/2022 by L. Miller