

**YELLOWSTONE DIVISION
YELLOWSTONE RIVER, BETWEEN TONGUE AND POWDER RIVERS
BASIN 42K
SECOND PRELIMINARY DECREE**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR THE SECOND
PRELIMINARY DECREE OF THE YELLOWSTONE RIVER, BETWEEN
TONGUE AND POWDER RIVERS**

The first Preliminary Decree for the Yellowstone River, Between Tongue and Powder (Basin 42K) was issued on September 19, 1985. Objections filed to claims in the first Preliminary Decree have been addressed and resolved.

Since issuance of the first Preliminary Decree in 1985, there have been statewide changes to several classes or elements of water rights. These changes include changes regarding examination and decrees of claims for fish and wildlife, wildlife, and recreation purposes. There have also been changes to claim elements such as standardization of source names and point of diversion legal descriptions. In some instances, additional information has been added to the abstracts of claims in this second Preliminary Decree. This additional information includes ditch names, reservoir data, and period of diversion. These changes have been authorized by Montana Water Court Orders. *See* Amended Order on Period of Diversion - Statewide entered December 11, 2008; Second Amended Order on Period of Diversion - Statewide entered November 10, 2014; Order Addressing Reexamination entered December 14, 2012; and Supplemental Order Regarding Fish and Wildlife, Wildlife, and Recreation Claims - Statewide 2013 entered April 17, 2013.

These Findings of Fact and Conclusions of Law are issued for inclusion in this second Preliminary Decree for the Yellowstone River, Between Tongue and Powder (Basin 42K) as authorized by §§ 3-7-224(2) and 85-2-231, MCA. These Findings of Fact and Conclusions of Law supersede and replace the Findings of Fact and Conclusions of Law for the first Preliminary Decree filed on September 19, 1985.

FINDINGS OF FACT

DESCRIPTION OF BASIN

1. Basin 42K encompasses the Yellowstone River between its confluence with the Tongue River and its confluence with the Powder River. The basin also includes the Yellowstone River tributaries in this reach and groundwater located within the hydrologic boundaries of the basin. The basin is immediately downstream of Basin 42KJ and upstream from Basin 42M. The boundaries of Basin 42K are outlined on the attached map.

DECREE ABSTRACTS AND INDEX

2. In addition to these Findings and Conclusions, this Decree consists of abstracts for each individual water right claim decreed in this basin. 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. Copies of the Decree and six Indexes are located at the Department of Natural Resources and Conservation (DNRC) Billings 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 their own water rights or other water rights in this Decree. Issues may also be raised by the Water Court on its own initiative ("on its own motion"). See Rule 8, W.R.Adj.R.

Many unresolved factual and legal issues have been noted by issue remarks on the individual 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 as directed by § 85-2-248, MCA.

Water users within this Basin and other interested persons will be mailed a Notice of Entry of Second Preliminary 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.

5. Claims for water rights reserved under the laws of the United States of America are included in the Montana general adjudication of water rights. The State of Montana, through the Reserved Water Rights Compact Commission, engaged in the negotiation of reserved water right compacts with the federal government and Indian Tribes. §§ 85-2-701 through 85-2-708, MCA.

6. There may be Tribal reserved rights in this basin that are not reflected in this decree. Those rights may be issued in a separate decree.

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 which is protected under the law as it existed prior to July 1, 1973. § 85-2-102(13), MCA.

2. Certain claims were exempt from the statement of claim filing process but could be voluntarily filed. § 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 right adjudication. § 85-2-222(2), MCA.

3. The Montana Water Court has jurisdiction to enter a second Preliminary Decree for the Yellowstone River, Between Tongue and Powder (Basin 42K) pursuant to Title 85, Chapter 2, Montana Code Annotated. *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 103 S.Ct. 3201, 77 L.Ed.2d 837 (1983); *State ex rel. Greely v. Conf. Salish & Kootenai Tribes*, 219 Mont. 76, 712 P.2d 754 (1985).

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

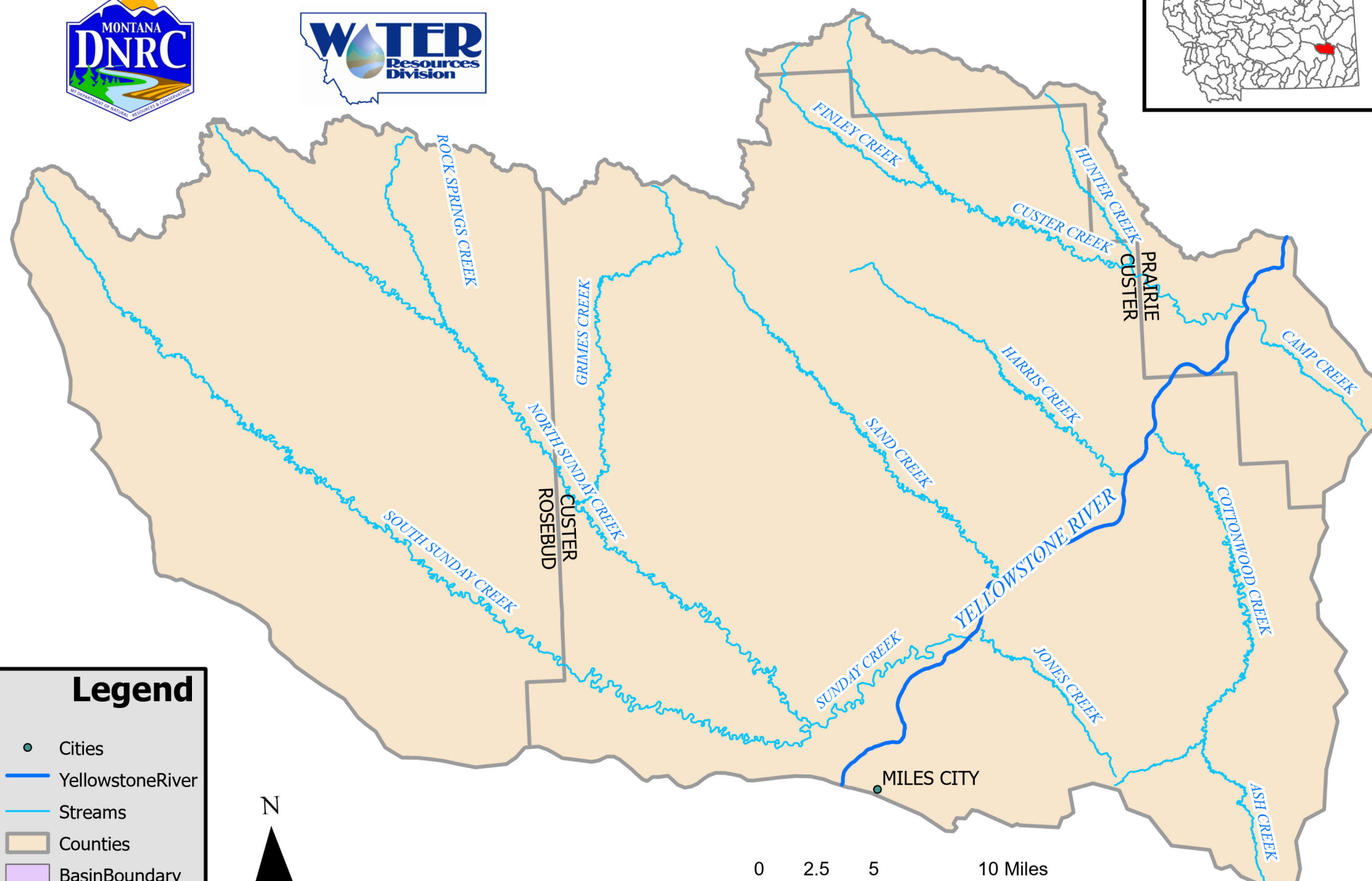
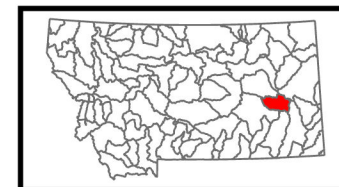
ELECTRONICALLY SIGNED AND DATED BELOW.

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BASIN 42K - YELLOWSTONE RIVER BETWEEN TONGUE AND POWDER RIVERS



Legend

- Cities
- Yellowstone River
- Streams
- Counties
- Basin Boundary



0 2.5 5 10 Miles

Map created by Rebecca Jensen 12/10/2024