

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
JEFFERSON RIVER BASIN (41G)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANT: BFR Family Limited Partnership LLLP

**CASE 41G-0053-R-2020**  
41G 197227-00

OBJECTORS: Brennan BB Ranch LLC; Reich Bros.;  
United States of America (Bureau of Land  
Management)

**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 be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve 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**

FINDINGS OF FACT

1. Claim 41G 197227-00 appeared in the Basin 41G Preliminary Decree issued February 15, 2018. It received an objection from Reich Bros, the United States Bureau of Land Management (BLM) and Brennan BB Ranch LLC.

2. On February 10, 2021, a Stipulation between BFR and BLM was filed. On March 11, 2021 a Stipulation between BFR and Reich Bros was filed. On November 2, 2021 a Stipulation between BFR and Brennan BB Ranch, LLC was filed. They are collectively referred to below as “the Stipulations.”

3. On November 8, 2021, BFR filed a Motion for Summary Judgment. The motion includes argument and evidence in support of the changes to claim 41G 197227-00 requested in the Stipulations.

4. In the Motion for Summary Judgment, BFR explains that the original claim filing for claim 41G 197227-00 identified the source as “Mormon Gulch,” which is the old name for an Unnamed Tributary of Magpie Creek. By 1973, the historical diversion had been moved to capture water from Magpie Creek itself. The point of diversion is where the Adkins Ditch crosses Magpie Creek, capturing all the water from Magpie Creek. In support, BFR attaches a topographic map, a copy of the Madison County Water Resources Survey for T2S, R2W, and a 1976 aerial photo showing the Adkins Ditch capturing Magpie Creek water.

The evidence supports the requested changes to the point of diversion, means of diversion, ditch name, and source for claim 41G 197227-00. The claim should be corrected as follows:

Maximum Acres: 240.00

Source Name: ~~UNNAMED TRIBUTARY OF PONY CREEK~~ MAGPIE CREEK

Source Type: SURFACE WATER  
~~ALSO KNOWN AS MORMON GULCH~~

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr	Sec	Sec	Twp	Rge	County
1			<del>NENENE SWNE</del>	<del>18 43</del>	2S	<del>2W 3W</del>	MADISON

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: ~~HEADGATE DITCH~~

Ditch Name: ~~MORMAN GULCH~~ ADKINS DITCH

Period of Use: MARCH 1 to NOVEMBER 1

Place of Use:

ID	Acres	Govt Lot	Qtr	Sec	Sec	Twp	Rge	County
1	240.00			N2	9	2S	2W	MADISON
Total:	240.00							

5. Additionally, BFR agrees in each of the Stipulations to reduce the priority date for claim 41G 197227-00 from August 29, 1889 to June 26, 1917.

6. Claim 41G 197227-00 received DNRC issue remarks stating:

A DITCH CONVEYING WATER FROM THE POINT OF DIVERSION TO THE PLACE OF USE COULD NOT BE IDENTIFIED FROM AVAILABLE INFORMATION.

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

The requested corrections to claim 41G 197227-00 clarify the point of diversion legal land description and the conveyance system. The modifications proposed in the Stipulations and BFR's Motion for Summary Judgment should be accepted by the court. The modifications resolve the issue remarks appearing on claim 41G 197227-00; the issue remarks should be removed.

#### CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 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. Rule 19, W.R.Adj.R.

The evidence provided by BFR, particularly the exhibits attached to the November 8, 2021 Motion for Summary Judgment, is sufficient to overcome the prima facie status of the source, point of diversion, means of diversion, and ditch name of claim 41G 197227-00.

2. The claimant of a water right claim may waive the advantage of § 85-2-227, MCA by requesting a reduction or limitation of an element of a water right claim. The water court may accept a claimant's requested reduction or limitation without further presentation of evidence unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R. The requested change to the priority date of claim 41G 197227-00 amounts to a reduction of the claim and does not require the presentation of further evidence.

3. Settlement agreements are subject to review and approval of the Water Court. Rule 17(a), W.R.Adj.R. The settlement documentation in this Case should be accepted by the Court.

4. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA. The issue remarks that appeared on claim 41G 197227-00 raised questions concerning the accuracy of the point of diversion and the conveyance system. The information and evidence provided by the claimants in support of the requested modifications to source, point of diversion, diversion means, and ditch name addresses the issue remarks. The issue remarks appearing on claim 41G 197227-00 have been resolved and should be removed.

#### RECOMMENDATIONS

1. Claim 41G 197227-00 should be modified as provided above; the issue remarks should be removed from the claim.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

---

Madeleine Weisz  
Senior Water Master

**Service via USPS Mail:**

Michael F. McGuinness  
PATTEN, PETERMAN, BEKKEDAHN & GREEN, P.L.L.C.  
2817 Second Avenue North, Suite 300  
Billings, MT 59101  
406-294-9500  
[mmcguinness@ppbglaw.com](mailto:mmcguinness@ppbglaw.com)

**Service via Electronic Mail:**

Ryan McLane  
William P. Driscoll  
FRANZ & DRISCOLL, PLLP  
PO Box 1155  
Helena, MT 59624-1155  
(406) 442-0005  
[Ryan@franzdriscoll.com](mailto:Ryan@franzdriscoll.com)  
[wpd@franzdriscoll.com](mailto:wpd@franzdriscoll.com)  
[Office@franzdriscoll.com](mailto:Office@franzdriscoll.com)

Jennifer A. Najjar  
US Dept of Justice, ENRD-NRS  
PO Box 7611  
Washington, DC 20044-7611  
(202) 305-0476  
[Jennifer.Najjar@usdoj.gov](mailto:Jennifer.Najjar@usdoj.gov)  
[MontanaBasins.ENRD@USDOJ.GOV](mailto:MontanaBasins.ENRD@USDOJ.GOV)

Eve McDonald, Attorney  
US Dept of Justice-ENRD  
999 18<sup>th</sup> Street, South Terrace Suite 370  
Denver, CO 80202  
(303) 844-1381  
[evelyn.mcdonald@usdoj.gov](mailto:evelyn.mcdonald@usdoj.gov)  
[Carla.Valentino@usdoj.gov](mailto:Carla.Valentino@usdoj.gov)  
[Amber.Engelkes@usdoj.gov](mailto:Amber.Engelkes@usdoj.gov)  
[MontanaBasins.ENRD@USDOJ.GOV](mailto:MontanaBasins.ENRD@USDOJ.GOV)  
[efile\\_nrs.enrd@usdoj.gov](mailto:efile_nrs.enrd@usdoj.gov)  
[william.bridges@usdoj.gov](mailto:william.bridges@usdoj.gov)

Benjamin S. Sudduth  
Sudduth Law, PLLC  
1050 East Main Street, Suite 3B  
PO Box 507  
Bozeman, MT 59771-0507  
(406) 272-2390  
[benjamin@sudduthlaw.com](mailto:benjamin@sudduthlaw.com)

**WATER COURT  
ABSTRACT OF WATER RIGHT CLAIM  
JEFFERSON RIVER  
BASIN 41G**

**Water Right Number:** 41G 197227-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** BFR FAMILY LIMITED PARTNERSHIP LLLP  
PO BOX 456  
ENNIS, MT 59729 0456

**Priority Date:** JUNE 26, 1917

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION  
**Irrigation Type:** FLOOD

**Flow Rate:** 1.25 CFS

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

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 240.00

**Source Name:** MAGPIE GULCH  
**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		NENENE	18	2S	2W	MADISON

**Period of Diversion:** MARCH 1 TO NOVEMBER 1

**Diversion Means:** DITCH

**Ditch Name:** ADKINS DITCH

**Period of Use:** MARCH 1 TO NOVEMBER 1

**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	240.00		N2	9	2S	2W	MADISON
<b>Total:</b>	240.00						

---

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

197217-00	197220-00	197223-00	197227-00	197228-00	197229-00
197230-00	197231-00	206735-00	206736-00		

LEIF M. JOHNSON, Acting U.S. Attorney  
District of Montana

41G-0053-R-2020

February 10, 2021

JEAN E. WILLIAMS, Acting Assistant Attorney General  
Environment & Natural Resources Division  
JENNIFER A. NAJJAR, Trial Attorney  
EVE W. McDONALD, Trial Attorney  
Natural Resources Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Telephone: (202) 305-0476  
Facsimile: (202) 305-0506

Montana Water Court

ATTORNEYS FOR UNITED STATES OF AMERICA,  
United States of America – Bureau of Land Management

Ryan McLane  
William P. Driscoll  
FRANZ & DRISCOLL, PLLP  
P.O. Box 1155  
Helena, MT 59624-1155  
Telephone: 406-442-0005  
Telecopier: 406-442-0008  
office@franzdriscoll.com  
ryan@franzdriscoll.com  
wpd@franzdriscoll.com

ATTORNEYS FOR BFR FAMILY LIMITED PARTNERSHIP LLLP

**IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
JEFFERSON RIVER BASIN (41G)**

\*\*\*\*\*

CLAIMANT: BFR Family Limited Partnership LLLP

**CASE 41G-0053-R-2020**  
41G 197227-00

OBJECTORS: Brennan BB Ranch LLC; Reich Bros.; United  
States of America (Bureau of Land Management)

---

**STIPULATION TO RESOLVE OBJECTIONS**

This Stipulation, entered into by the United States of America, Bureau of Land  
Management (hereinafter the “United States”), and Claimant BFR Family Limited Partnership

LLLP (“Claimant”), is for the purpose of resolving the United States’ objections to Water Right Claim No. 41G 197227-00.

### **RECITALS**

A. Pursuant to Mont. Code Ann. § 85-2-221, Claimant’s predecessor timely filed a Statement of Claim for 41G 197227-00 with the Department of Natural Resources and Conservation (“DNRC”).

B. Pursuant to Mont. Code Ann. § 85-2-233, the United States timely filed a Notice of Objection to Statement of Claim No. 41G 197227-00 as it appeared on the Preliminary Decree for Basin 41G.

C. Statement of Claim No. 41G 197227-00, as it appeared in the Preliminary Decree for Basin 41G, claimed a flood irrigation water right from an Unnamed Tributary of Pony Creek, through a point of diversion in the SWNE Section 13, Township 2 South, Range 3 West, and a place of use within N2 Section 9, Township 2 South, Range 2 West.

D. The claimed source name should be amended to Magpie Creek to more accurately describe the source, and the claimed point of diversion, means of diversion, and ditch name should be corrected to accurately reflect its true location, means, and ditch name.

E. Since the preliminary decree was issued, BFR Family Limited Partnership LLLP has filed a DNRC Ownership Update, and a motion to substitute in this case, and they are understood to be the owners of Water Right Claim No. 41G 197227-00.

F. In the interest of resolving this case without the need for further litigation, Claimant and the United States stipulate and agree to the following:



## AGREEMENT

1. The source name should be amended as follows:

**Source Name:** ~~Unnamed Tributary of Pony Creek~~ **Magpie Creek**

2. The point of diversion, means of diversion, and ditch name should be amended as follows:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENENE	SWNE	18 43	2S	2W 3W MADISON

3. The Means of Diversion should be amended to “Ditch.”
4. The Ditch name should be amended to “Adkins Ditch.”
5. The proposed abstract and maps illustrating the proposed source, attached as **Exhibits A, B, and C**, accurately reflect the stipulated amendments to the claim.
6. Upon entry of a ruling and final order in this case reflecting the amendments specified above, the United States’ objections to 41G 197227-00 shall be deemed resolved, provided that such order(s) do not expand or change other substantive elements of the claim.
7. This Stipulation is the compromise of disputed water claims and is not to be construed as an admission against the interests of any party.
8. The terms of this Stipulation are binding on the parties, their successors, heirs, and assignees. Nothing in this Stipulation shall create any right, claim, cause of action, objection, defense, or other remedy in any person not a party to the Stipulation.
9. Each party agrees to bear its own costs and attorney fees arising from the negotiation and execution of the Stipulation and in proceedings before the Montana Water Court regarding this case.

10. Each undersigned party entered into and executed this Stipulation voluntarily, in good faith, and without any fraud, misunderstanding, misrepresentation, overreaching, duress, or undue influence, whatsoever.

11. This Stipulation may be executed by the parties in counterparts, each of which when executed and filed with the Montana Water Court shall be an original, but all of which together shall constitute one instrument.

12. The parties agree that this document (¶¶ 1-12) embodies the entire Stipulation of the parties.

IT IS SO AGREED AND STIPULATED on the date last entered below:

LEIF M. JOHNSON  
Acting U.S. Attorney, District of Montana

JEAN E. WILLIAMS  
Acting Assistant Attorney General

Dated: February 8, 2021



JENNIFER A. NAJJAR, Trial Attorney  
Jennifer.Najjar@usdoj.gov | (202) 305-0476  
Natural Resources Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Electronic Service: [MontanaBasins.ENRD@usdoj.gov](mailto:MontanaBasins.ENRD@usdoj.gov)

ATTORNEYS FOR UNITED STATES OF  
AMERICA, Bureau of Land Management

Dated: Feb 2, 2021



BFR Family Limited Partnership, LLLP  
By: Porter Bennett

Approved as to Form:

FRANZ & DRISCOLL, PLLP

Dated: February 4, 2021

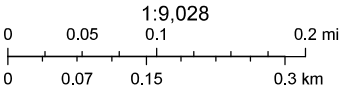
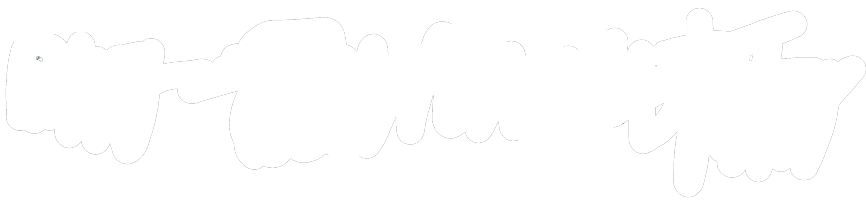


---

Ryan McLane  
Attorney for BFR Family Limited Partnership LLLP

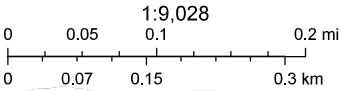
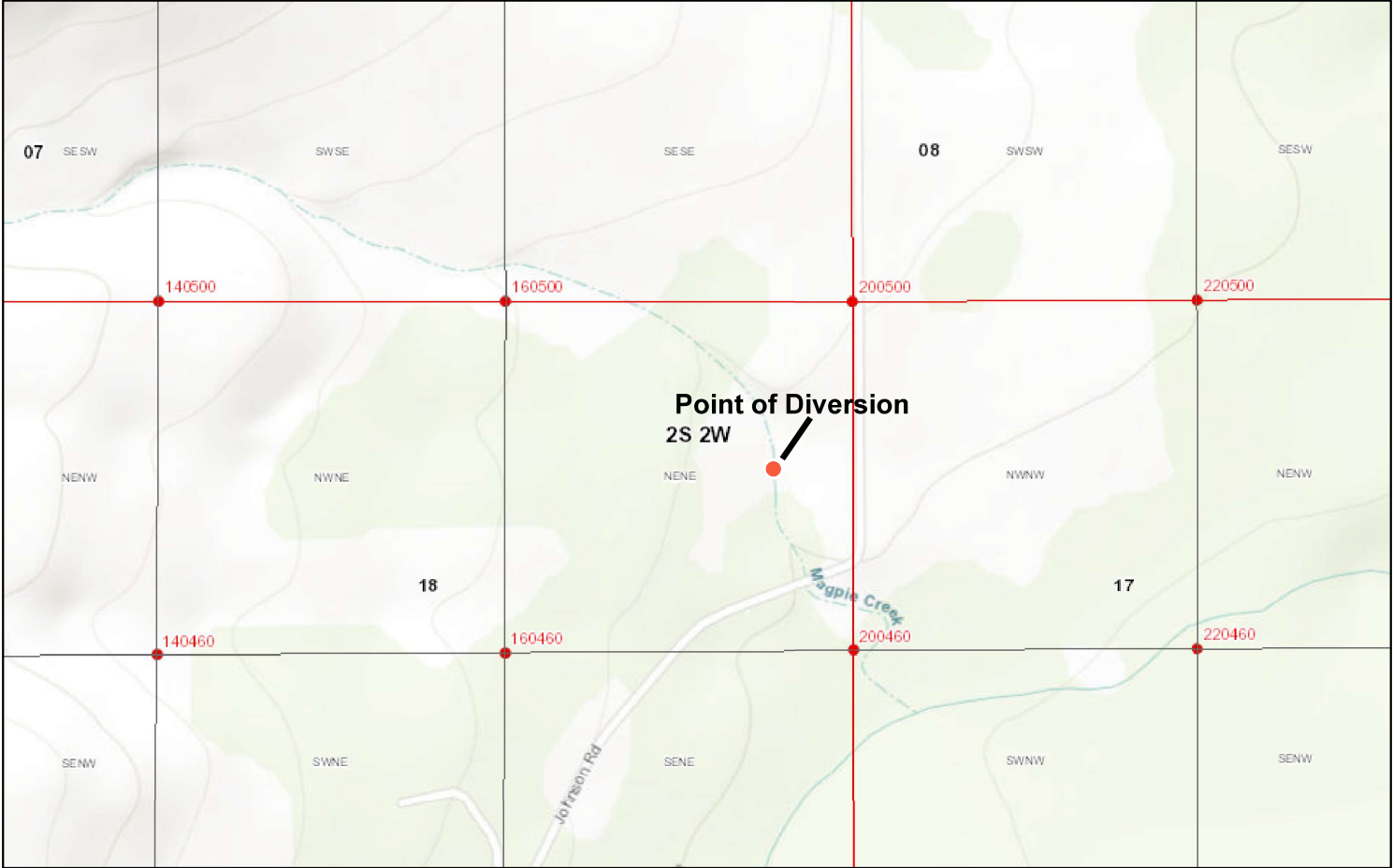
# **Exhibit A**

Exhibit A



# **Exhibit B**

Exhibit B



# **Exhibit C**



**STATE OF MONTANA**  
**DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION**

1424 9TH AVENUE P.O.BOX 201601 HELENA, MONTANA 59620-1601

**GENERAL ABSTRACT**

**Water Right Number:** 41G 197227-00 STATEMENT OF CLAIM

**Version:** 3 -- REEXAMINED

**Version Status:** ACTIVE

**Owners:** BFR FAMILY LIMITED PARTNERSHIP, LLLP  
PO BOX 456  
ENNIS, MT 59729-0456

**Priority Date:** AUGUST 29, 1889

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Maximum Flow Rate:** 1.25 CFS

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

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 240.00

**Source Name:** ~~UNNAMED TRIBUTARY OF PONY CREEK~~ MAGPIE CREEK

**Source Type:** SURFACE WATER

~~ALSO KNOWN AS MORMON GULCH~~

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

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			<del>NENENE</del> <u>SWNE</u>	<del>18</del> <u>43</u>	2S	<del>2W</del> <u>3W</u>	MADISON

**Period of Diversion:** MARCH 1 TO NOVEMBER 1

**Diversion Means:** ~~HEADGATE~~ DITCH

**Ditch Name:** ~~MORMAN GULCH~~ ADKINS DITCH

**Period of Use:** MARCH 1 to NOVEMBER 1

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	240.00			N2	9	2S	2W	MADISON

**Total:** 240.00

## EXHIBIT C

41G 197227-00

Page 2 of 2  
General Abstract

### Remarks:

MODERATE THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

199217-00 1997220-00 197223-00 197227-00 199228-00 1997229-00 197230-00 197231-00 206735-00  
206736-00.

41G-0053-R-2020

March 11, 2021

Montana Water Court

Ryan McLane  
William P. Driscoll  
FRANZ & DRISCOLL, PLLP  
P.O. Box 1155  
Helena, MT 59624-1155  
Telephone: 406-442-0005  
Telecopier: 406-442-0008  
office@franzdriscoll.com  
ryan@franzdriscoll.com  
wpd@franzdriscoll.com  
Attorney for BFR Family Limited Partnership LLLP

**IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
JEFFERSON RIVER BASIN (41G)  
PRELIMINARY DECREE**

\*\*\*\*\*

CLAIMANT: BFR Family Limited Partnership, LLLP

**CASE 41G-0053-R-2020**  
41G 197227-00

OBJECTORS: Brennan BB Ranch LLC; Reich Bros; United States of  
America (Bureau of Land Management)

**NOTICE OF FILING OF STIPULATION**

Claimant, BFR Family Limited Partnership, LLLP ("BFR") by and through its  
undersigned attorney, hereby files the attached stipulation in this matter.

Dated this 11th day of March, 2021.

FRANZ & DRISCOLL, PLLP

/s/ Ryan McLane

Ryan McLane

And BFR Family Limited Partnership, LLLP

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *NOTICE OF FILING OF STIPULATION* was mailed, via United States Postal Service, First Class Mail, postage fully prepaid thereon, or emailed as indicated, this 1th day of March, 2021, to:

Jennifer A. Najjar  
Trial Attorney  
US Dept of Justice, ENRD-NRS  
PO Box 7611  
Washington, DC 20044-7611  
(202) 514-3553  
Jennifer.Najjar@usdoj.gov  
MontanaBasins.ENRD@USDOJ.GOV

Benjamin Sudduth  
Sudduth Law, PLLC  
PO Box 507  
Bozeman, MT 59771-0507  
406-272-2390  
benjamin@sudduthlaw.com

Michael F. McGuinness  
Patten, Peterman, Bekkedahl & Green, P.L.L.C.  
2817 Second Avenue North, Suite 300  
Billings, MT 59101  
(406) 252-8500  
mmcguinness@ppbglaw.com

/s/ Galen Brewer  
Galen Brewer

Ryan McLane  
William P. Driscoll  
FRANZ & DRISCOLL, PLLP  
P.O. Box 1155  
Helena, MT 59624-1155  
Telephone: 406-442-0005  
Telecopier: 406-442-0008  
office@franzdriscoll.com  
wpd@franzdriscoll.com  
ryan@franzdriscoll.com  
Attorney for BFR Family Limited Partnership LLLP

Benjamin S. Sudduth  
SUDDUTH LAW, PLLC  
1050 East Main Street, Suite 3  
PO Box 507  
Bozeman, MT 59771-0507  
406-272-2390  
benjamin@sudduthlaw.com  
Attorney for George A. Reich, and Reich Bros.

**IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
JEFFERSON RIVER BASIN (41G)  
PRELIMINARY DECREE**

\*\*\*\*\*

CLAIMANT: BFR Family Limited Partnership LLLP

OBJECTORS: Brennan BB Ranch LLC; Reich Bros.;  
United States of America (Bureau of Land Management)

**CASE 41G-R53**  
41G 197227-00

**STIPULATION AND AGREEMENT**

Claimant BFR Family Limited Partnership LLLP ("BFR"), and Objector Reich Bros.

("Reich") (collectively "Parties") stipulate and agree as follows:

//

//

//

## **RECITALS**

A. Pursuant to Montana Code Annotated (M.C.A.) § 85-2-221, the BFR's predecessors-in-interest timely filed statement of claim 41G 197227-00 with the Montana Department of Natural Resources and Conservation.

B. Pursuant to M.C.A. § 85-2-223, Reich timely filed an objection to statement of claim 41G 197227-00.

C. The Parties mutually desire to resolve their differences pertaining to Claimant's above-stated water right claims, and the objections pertaining to Claimant's above-stated water right claims.

D. Statement of Claim No. 41G 197227-00, as it appeared in the Preliminary Decree for Basin 41G, claimed a flood irrigation water right from an Unnamed Tributary of Pony Creek with a priority date of August 29, 1889, through a point of diversion in the SWNE Section 13, Township 2 South, Range 3 West, and a place of use within N2 Section 9, Township 2 South, Range 2 West.

E. The claimed source for 41G 197227-00 is actually Magpie Creek, and therefore the claimed source, point of diversion, means of diversion, and ditch name should be corrected to accurately reflect actual historical use. The priority date should be reduced to June 26, 1917.

## **AGREEMENT**

THEREFORE, in mutual consideration of the covenants and conditions set forth below, the Parties stipulate and agree as follows:

1. Accordingly, Statement of Claim No. 41G 197227-00 should be adjudicated as that claim appears in the Basin 41G Preliminary Decree except as follows:
  - a. The priority date should be amended to June 26, 1917.

- b. The Source should be amended to Magpie Creek.
- c. The point of diversion and means of diversion and ditch name should be amended as follows, and the following remark added:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		<u>NENENE</u> SWNE	<u>18</u> 43	2S	<u>2W</u> 3W	MADISON

**Diversion Means:** ~~Headgate~~ Ditch  
**Diversion Name:** ~~Mormon Gulch~~ Adkins Ditch

2. A proposed redline abstract of 41G 197227-00, and maps illustrating the historical source and point of diversion location, attached as **Exhibits A, B, and C**, accurately reflect the stipulated amendments to the claim.
3. Reich agrees to fully withdraw his objection in Case 41G-0053-R-2020, as well as any and all objections that might have otherwise been asserted with respect to the adjudication of the existing water rights claims subject to this Stipulation and Agreement. Claimant fully agrees to the adjudication of the existing water rights claim subject to this Stipulation and Agreement as set forth in this Stipulation and Agreement.
4. This Stipulation and Agreement shall take effect immediately upon its execution by each and every one of the Parties, subject to the subsequent entry and filing of (1) a Water Master's Report, (2) a Water Court Order Adopting Master's Report, and (3) a Final Decree incorporating the adjudication of Claimant's existing water right claims as set forth in this Stipulation and Agreement.
5. This Stipulation and Agreement is entered into in compromise and settlement of the Parties' differences with respect to the adjudication of existing water right claims as set forth in this Stipulation and Agreement. Nothing stated in this Stipulation and Agreement shall be construed or interpreted as any admission against interest by any of the Parties.

6. This Stipulation and Agreement shall be construed and interpreted according to the laws of the State of Montana, and any litigation over this Stipulation and Agreement must be venued in the State of Montana.

7. It is mutually understood and agreed between the Parties that this Stipulation and Agreement sets forth the entire agreement between the Parties pertaining to the adjudication of the existing water rights in Water Court Case 41G-0053-R-2020.

8. Each of the Parties executes this Stipulation and Agreement fully understanding it, with the legal capacity to enter into it, represented by legal counsel and / or having the opportunity to obtain any desired legal counsel, or independent professional or other advice pertaining to it.

9. Each of the Parties represents and affirms that each of their respective signatories to this Stipulation and Agreement have been duly authorized to execute and bind each of the Parties to this Stipulation and Agreement.

10. This Stipulation and Agreement is binding upon each of the Parties and all of the Parties' respective heirs, assigns, representatives, agents, and successors in interest. Nothing stated in this Stipulation and Agreement shall create any rights in any third party with respect to the subject matter of this Stipulation and Agreement.

11. Each of the Parties are solely responsible for all of their own attorneys' or consultants' fees and expenses incurred with respect to this matter prior to the execution of this Stipulation and Agreement.

12. This Stipulation and Agreement may be executed in counterparts, which together shall constitute one agreement. Facsimile or electronically transmitted copies of signatures shall be deemed the equivalent of original signatures.



13. The Parties agree this Stipulation and Agreement shall be promptly filed with the Water Court after it is executed by all Parties.

BY OUR SIGNATURES BELOW WE CERTIFY THAT WE HAVE READ THE STIPULATION AS OUTLINED ABOVE AND AGREE TO ITS CONTENTS.

Porter Bennett  
BFR Family Limited Partnership LLLP  
By: Porter Bennett, Partner

3/8/21  
Date

Reich Bros.  
By: George A. Reich

                      
Date

13. The Parties agree this Stipulation and Agreement shall be promptly filed with the Water Court after it is executed by all Parties.

BY OUR SIGNATURES BELOW WE CERTIFY THAT WE HAVE READ THE STIPULATION AS OUTLINED ABOVE AND AGREE TO ITS CONTENTS.

\_\_\_\_\_  
BFR Family Limited Partnership LLLP  
By: Porter Bennett, Partner

\_\_\_\_\_  
Date

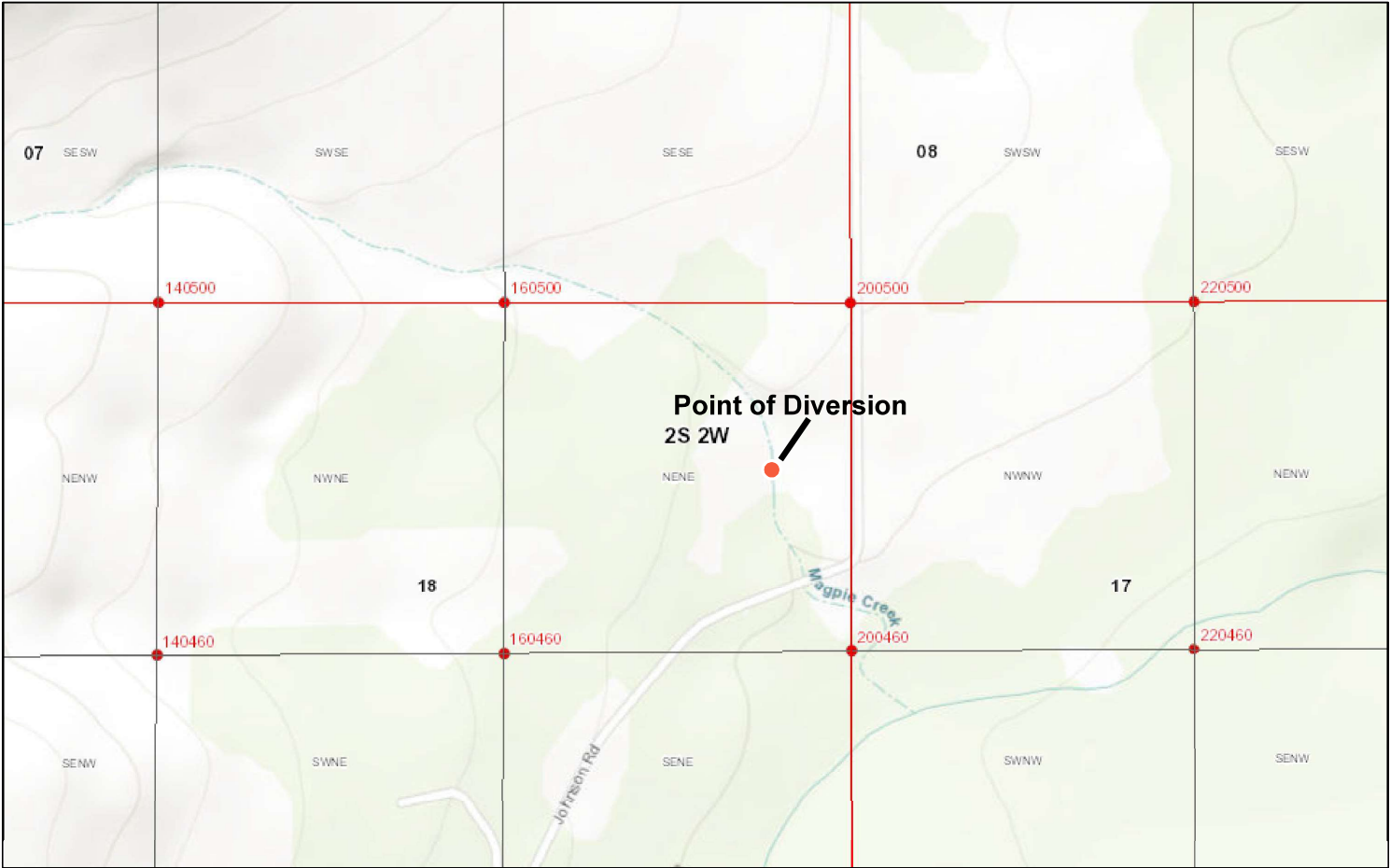
George A. Reich  
Reich Bros.  
By: George A. Reich

3/9/21  
Date

Exhibit A

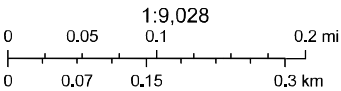


Exhibit B



November 30, 2020

- |                      |                      |                       |                     |
|----------------------|----------------------|-----------------------|---------------------|
| PLSS Meandered Water | PLSS Spectra Survey  | Remainder Aiquot Part | Unnumbered Lot      |
| PLSS Point           | PLSS Second Division | Government Lot        | PLSS First Division |
|                      | Aiquot Part          |                       | Section             |



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, CN, Kadaster NL, Ordnance Survey, Esri  
Bureau of Land Management, Esri Canada, Esri, HERE, Garmin, INCREMENT P, Intermap, USGS, MET/NASA, EPA, USDA  
Author Name

# EXHIBIT C

41G 197227-00

Page 1 of 2  
General Abstract

STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

1424 9TH AVENUE P.O.BOX 201601 HELENA, MONTANA 59620-1601

## GENERAL ABSTRACT

Water Right Number: 41G 197227-00 STATEMENT OF CLAIM

Version: 3 -- REEXAMINED

Version Status: ACTIVE

Owners: BFR FAMILY LIMITED PARTNERSHIP, LLLP  
PO BOX 456  
ENNIS, MT 59729-0456

Priority Date: ~~AUGUST 29, 1889~~ JUNE 26, 1917

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Maximum Flow Rate: 1.25 CFS

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

Climatic Area: 3 - MODERATE

Maximum Acres: 240.00

Source Name: ~~UNNAMED TRIBUTARY OF PONY CREEK~~ MAGPIE CREEK

Source Type: SURFACE WATER

~~ALSO KNOWN AS MORMON GULCH~~

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr	Sec	Sec	Twp	Rge	County
1			<del>SWNE</del>	<u>18 43</u>	2S	<u>2W 3W</u>	MADISON

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: ~~HEADGATE~~ DITCH

Ditch Name: ~~MORMAN GULCH~~ ADKINS DITCH

Period of Use: MARCH 1 to NOVEMBER 1

Place of Use:

ID	Acres	Govt Lot	Qtr	Sec	Sec	Twp	Rge	County
1	240.00			N2	9	2S	2W	MADISON
Total:	240.00							

# EXHIBIT C

41G 197227-00

Page 2 of 2  
General Abstract

## Remarks:

MODERATE THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

199217-00 1997220-00 197223-00 197227-00 199228-00 1997229-00 197230-00 197231-00 206735-00  
206736-00.

Ryan McLane  
William P. Driscoll  
FRANZ & DRISCOLL, PLLP  
P.O. Box 1155  
Helena, MT 59624-1155  
Telephone: 406-442-0005  
Telecopier: 406-442-0008  
office@franzdriscoll.com  
ryan@franzdriscoll.com  
wpd@franzdriscoll.com  
Attorney for BFR Family Limited Partnership LLLP

41G-0053-R-2020

November 2, 2021

Montana Water Court

**IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
JEFFERSON RIVER BASIN (41G)  
PRELIMINARY DECREE**

\*\*\*\*\*

CLAIMANT: BFR Family Limited Partnership, LLLP

**CASE 41G-0053-R-2020**  
41G 197227-00

OBJECTORS: Brennan BB Ranch LLC; Reich Bros; United States of  
America (Bureau of Land Management)

**NOTICE OF FILING OF STIPULATION**

Claimant, BFR Family Limited Partnership, LLLP ("BFR") by and through its undersigned attorney, hereby files the attached stipulation between BFR and Brennan BB Ranch, LLC.

Dated this 2nd day of November, 2021.

FRANZ & DRISCOLL, PLLP

/s/ Ryan McLane

Ryan McLane  
Attorneys for BFR Family Limited Partnership

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Notice of Filing of Stipulation* was mailed, via United States Postal Service, First Class Mail, postage fully prepaid thereon, or emailed as indicated, this 2nd day of November, 2021, to:

Jennifer A. Najjar  
Trial Attorney  
US Dept of Justice, ENRD-NRS  
PO Box 7611  
Washington, DC 20044-7611  
(202) 514-3553  
Jennifer.Najjar@usdoj.gov  
MontanaBasins.ENRD@USDOJ.GOV

Benjamin Sudduth  
Sudduth Law, PLLC  
PO Box 507  
Bozeman, MT 59771-0507  
406-272-2390  
benjamin@sudduthlaw.com

Michael F. McGuinness  
Patten, Peterman, Bekkedahl & Green, P.L.L.C.  
2817 Second Avenue North, Suite 300  
Billings, MT 59101  
(406) 252-8500  
mmcguinness@ppbglaw.com

/s/ Galen Brewer  
Galen Brewer



**IN THE WATER COURT OF THE STATE OF MONTANA**  
**UPPER MISSOURI DIVISION**  
**JEFFERSON BASIN (41G)**

<b>CLAIMANTS:</b> BFR Family Limited Partnership, LLLP  <b>OBJECTOR:</b> Reich Bros.; Brennan BB Ranch LLC; USA (Dept of Interior Bureau of Land Management)	<b>CASE 41G-0053-R-2020</b>  41G 197227-00  <b><u>STIPULATION TO RESOLVE OBJECTIONS BETWEEN CLAIMANT BFR FAMILY LIMITED PARTNERSHIP, LLLP &amp; OBJECTOR BRENNAN BB RANCH, LLC</u></b>
--	--

This Stipulation is entered by and between Claimant BFR Family Limited Partnership, LLLP and Objector Brennan BB Ranch, LLC. The parties hereby stipulate and agree as follows:

**RECITALS**

1. Water Right Claim No. 41G 197227-00, as that right appears in the Preliminary Decree for Basin 41G, is as follows: A filed water right upon a tributary of Pony Creek, being a tributary of North Willow Creek, with a stated priority date of August 29, 1889. Claimant BFR Family Limited Partnership, LLLP (“BFR”) is identified as the owner. The point of diversion was a headgate located upon an unnamed tributary of Pony Creek in the SWNE of Section 13, Township 2 South, Range, 3 West, P.M.M. of Madison County. Water Right Claim No. 41G 197227-00 is a supplemental right, with overlapping places of use with Water Right Claim Nos. 41G 197217-00-00, 41G 197220-00, 41G 197223-00, 41G 197227-00, 41G 197228-00, 41G 197229-00, 41G 197230-00, 41G 197231-00, 41G 206735 and 41G 206736-00.
2. On February 11, 2019, Brennan BB Ranch, LLC (“Brennan”), filed a Notice of Objection and Request for Hearing on Water Right Claim No. 41G 197227-00. Brennan objected to Water

Right Claim No. 41G 197227-00 on the basis of its flow rate and volume, its period of use, source, abandonment or non-perfection and priority date.

3. Pursuant to Mont. Code Ann. §§ 3-7-224(2) and 85-2-227 the Water Court has jurisdiction to accept a valid settlement agreement for this matter, decide upon it, and enter a final decision regarding each of the elements of the claims consolidated in this matter.

4. In the interest of resolving these claims without the need for further litigation, the parties have executed this Stipulation to resolve the objections and appearances.

### **AGREEMENT**


1. **Water Right Claim No. 41G 197227-00:** To resolve Brennan's objections Water Right Claim No. 41G 197227-00 should be adjudicated a source of Magpie Gulch, a point of diversion of NENENE, Section 18, Township 2 South, Range, 2 West, P.M.M. of Madison County, and a priority date of June 26, 1917. The flow rate, volume, and period of use shall remain as those elements appeared in the Preliminary Decree for basin 41G.

2. This Stipulation sets forth the entire agreement between the parties concerning the adjudication of Water Right Claim No. 41G 197227-00. 3. Upon the Montana Water Court's entry of a ruling and a final order in this proceeding reflecting the modifications to Water Right Claim No. 41G 197227-00 consistent with this Stipulation, the objections and appearances of the parties shall be deemed withdrawn and resolved.

4. The parties agree that the changes to Water Right Claim Nos. 41G 197227-00 are legally and factually warranted and should be reflected in the entry of the Final Decree for Basin 41G.

5. This Stipulation shall take effect immediately upon its execution by each and every one of the Parties.

6. Each party asserts that it entered into an executed this Stipulation voluntarily, in good faith, and without any fraud, misunderstanding, misrepresentation, duress or undue influence.
7. Each party asserts that their respective signatory to this Stipulation is duly authorized to execute and bind that party to this Stipulation.
8. Each party agrees to bear its own costs and attorney fees.
9. This Stipulation is binding upon the Parties, and their heirs, successors and assigns.
10. Nothing in this Stipulation creates any rights in any third party.
11. This Stipulation may be signed in counterparts, which together shall constitute one agreement. Facsimile or electronically transmitted copies of signatures shall be deemed the equivalent of originals.

  
\_\_\_\_\_  
BFR Family Limited Partnership, LLLP.  
By: Porter Bennett, Partner

  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Brennan BB Ranch, LLC  
Todd Brennan, Member

\_\_\_\_\_  
Date

6. Each party asserts that it entered into an executed this Stipulation voluntarily, in good faith, and without any fraud, misunderstanding, misrepresentation, duress or undue influence.
7. Each party asserts that their respective signatory to this Stipulation is duly authorized to execute and bind that party to this Stipulation.
8. Each party agrees to bear its own costs and attorney fees.
9. This Stipulation is binding upon the Parties, and their heirs, successors and assigns.
10. Nothing in this Stipulation creates any rights in any third party.
11. This Stipulation may be signed in counterparts, which together shall constitute one agreement. Facsimile or electronically transmitted copies of signatures shall be deemed the equivalent of originals.

\_\_\_\_\_  
BFR Family Limited Partnership, LLLP.  
By: Porter Bennett, Partner

  
\_\_\_\_\_  
Brennan BB Ranch, LLC  
Todd Brennan, Member

\_\_\_\_\_  
Date

10-25-21

\_\_\_\_\_  
Date