

43B-0413-R-2021

December 22, 2021

Montana Water Court

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

\* \* \* \* \*

CLAIMANT: Karen K. McKibben

CASE 43B-0413-R-2021

43B 13684-00  
43B 13686-00  
43B 13698-00

OBJECTOR: 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 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**

Each of these Karen K. McKibben claims appeared in the Preliminary Decree with the following remark:

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

Claim 43B 13698-00 also appeared with the following 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.

The United States of America (Bureau of Land Management) objected to each of these claims.

On September 27, 2021 the United States' Motion For Order To Show Cause was filed.

No response was filed by Karen K. McKibben. On October 18, 2021 the Order Granting Motion For Order To Show Cause and Order Setting Show Cause Filing Deadline which states:

ORDERED that the Motion is GRANTED and the deadline is **November 18, 2021** for Karen K. McKibben to show cause in writing why the following changes as detailed in the Motion should not be made to claims 43B 13684-00 and 43B 13686-00:

For 43B 13684-00, the place of use be modified to describe its location as follows:

<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
N2	9	1S	15E	SWEET GRASS
N2S2	9	1S	15E	SWEET GRASS
SWSW	9	1S	15E	SWEET GRASS
SESE	9	1S	15E	SWEET GRASS

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND.

For 43B 13686 00, the place of use be modified to describe its location as follows:

<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
W2	2	1S	15E	SWEET GRASS
S2SE	2	1S	15E	SWEET GRASS
N2NE	2	1S	15E	SWEET GRASS
SWNE	2	1S	15E	SWEET GRASS

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND.

If Karen K. McKibben does not show cause in writing filed by November 18, 2021, the Court will proceed with making these requested changes.

Nothing was filed by Karen K. McKibben. The Motion and Orders 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 these claims, the period of diversion remark provides notice of this change made prior to issuance of the Preliminary Decree and does not raise an unresolved issue which needs to be addressed. There are no proceedings required for this remark. The remark should be removed from each abstract as having served its notice purpose.

2. For claim 43B 13684-00, the Preliminary Decree states that the place of use is:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
9	1S	15E		SWEET GRASS

The place of use should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
N2	9	1S	15E	SWEET GRASS
N2S2	9	1S	15E	SWEET GRASS
SESE	9	1S	15E	SWEET GRASS
SWSW	9	1S	15E	SWEET GRASS

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND.

3. For claim 43B 13686-00, the Preliminary Decree states that the place of use is:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
2	1S	15E		SWEET GRASS

The place of use should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
N2NE	2	1S	15E	SWEET GRASS
SWNE	2	1S	15E	SWEET GRASS
S2SE	2	1S	15E	SWEET GRASS
W2	2	1S	15E	SWEET GRASS

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND.

4. For claim 43B 13698-00, there are no changes to be made to the elements of the claim.

The remark concerning point of diversion and place of use provides notice of these changes made prior to issuance of the Preliminary Decree and does not raise an unresolved issue which needs to be addressed. There are no proceedings required for this remark. The remark should be removed from each abstract as having served its notice purpose.

#### CONCLUSION OF LAW

The Motion filed by the objector coupled with the claimant's failure to show cause in writing why the Court should not change the claims as stated in the Motion 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.

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Kathryn L. W. Lambert  
Senior Water Master

Service Via USPS Mail:

Karen K. McKibben  
126 Upper Deer Creek Rd  
Big Timber, MT 59011-8039

Service Via Email:

Romney S. Philpott, Trial Attorney  
US Department of Justice  
ENRD, Natural Resources Section  
999 18th Street, South Terrace Suite 370  
Denver, CO 80202  
(303) 844-1810  
romney.philpott@usdoj.gov  
carla.valentino@usdoj.gov  
amber.engelkes@usdoj.gov  
Montanabasins.enrd@usdoj.gov  
william.bridges@usdoj.gov  
efile\_nrs.enrd@usdoj.gov

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

**Water Right Number:** **43B 13684-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** KAREN K MCKIBBEN  
126 UPPER DEER CREEK RD  
BIG TIMBER, MT 59011 8039

**Priority Date:** DECEMBER 31, 1943

**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:** SPRING, UNNAMED TRIBUTARY OF PETERSON GULCH

**Source Type:** GROUNDWATER

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

<b>ID</b>	<b>Govt Lot</b>	<b>Otr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1		NWNWNE	9	1S	15E	SWEET GRASS

**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:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Otr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1			N2	9	1S	15E	SWEET GRASS
2			N2S2	9	1S	15E	SWEET GRASS
3			SESE	9	1S	15E	SWEET GRASS
4			SWSW	9	1S	15E	SWEET GRASS

THE PLACE OF USE IS LOCATED ENTIRELY ON PRIVATE LAND.

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

**Water Right Number:** **43B 13686-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** KAREN K MCKIBBEN  
126 UPPER DEER CREEK RD  
BIG TIMBER, MT 59011 8039

**Priority Date:** DECEMBER 31, 1943

**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:** SPRING, UNNAMED TRIBUTARY OF UPPER DEER CREEK

**Source Type:** GROUNDWATER

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

<b>ID</b>	<b>Govt Lot</b>	<b>Otr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1		NWSWSE	2	1S	15E	SWEET GRASS

**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:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Otr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1			N2NE	2	1S	15E	SWEET GRASS
2			SWNE	2	1S	15E	SWEET GRASS
3			S2SE	2	1S	15E	SWEET GRASS
4			W2	2	1S	15E	SWEET GRASS

THE PLACE OF USE IS LOCATED ENTIRLEY ON PRIVATE LAND.

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

**Water Right Number:** **43B 13698-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** KAREN K MCKIBBEN  
126 UPPER DEER CREEK RD  
BIG TIMBER, MT 59011 8039

**Priority Date:** JANUARY 31, 1943

**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:** UPPER DEER CREEK

**Source Type:** SURFACE WATER

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

<b>ID</b>	<b>Govt Lot</b>	<b>Otr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1		NESEW	10	1S	15E	SWEET GRASS

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

2		N2	10	1S	15E	SWEET GRASS
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

3		W2SW	2	1S	15E	SWEET GRASS
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

4		SESE	3	1S	15E	SWEET GRASS
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**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:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Otr Sec</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1				10	1S	15E	SWEET GRASS
2				3	1S	15E	SWEET GRASS

3

W2SW 2 1S 15E SWEET GRASS