

Montana Water Court
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ELECTRONICALLY FILED

43B-0399-R-2021

September 15, 2021

Montana Water Court

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

CLAIMANT: Grizzly Creek Ranch LLC

CASE 43B-0399-R-2021
43B 194866-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusion of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. Because this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

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 this 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

Grizzly Creek Ranch LLC claim 43B 194866-00 appeared in the Preliminary Decree with

the following remarks:

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

THE TIMELY FILED OBJECTION OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE PLACE OF USE . BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

The point of diversion issue remark was not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence. On June 10, 2021 Grizzly Creek Ranch LLC filed its Notice Of Filing Affidavit And Request To Correct Claim To Resolve Issue Remark, including the Affidavit of Dan Tompkins, Ranch Manager, Grizzly Creek Ranch LLC. This settlement document is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

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. The Preliminary Decree states that the point of diversion legal description is NESWSW section 14, T8S, R6E, PARK. The point of diversion legal description should be NWSESW section 14, T8S, R6E, PARK. The point of diversion issue remark should be removed as addressed and resolved.

2. The other remarks provide notice of actions taken during the Temporary Preliminary Decree proceedings or made prior to issuance of the Preliminary Decree, and do not raise unresolved issues which need to be addressed. These remarks should be removed as having served their notice purposes.

CONCLUSION OF LAW

The information provided by the claimant is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

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 is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

Kathryn L. W. Lambert
Senior Water Master

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

Water Right Number: 43B 194866-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GRIZZLY CREEK RANCH LLC
PO BOX 955
SUMMERLAND, CA 93067 0955

Priority Date: JULY 1, 1902

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.88 CFS

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

Climatic Area: 5 - LOW

***Maximum Acres:** 71.28

Source Name: HORSE CREEK, EAST FORK

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		NWSEW	14	8S	6E	PARK

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: PFOHL DITCH

Period of Use: MAY 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	1.60		NWSW	11	8S	6E	PARK
2	10.40		SWSW	11	8S	6E	PARK
3	16.20		NESW	11	8S	6E	PARK
4	36.48		SESW	11	8S	6E	PARK
5	0.20		NWSE	11	8S	6E	PARK
6	6.40		SWSE	11	8S	6E	PARK
Total:	<u>71.28</u>						