

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

* * * * *

CLAIMANTS: Dancing Wind LLC; Alex C. Sienkiewicz; Holly DF
Sienkiewicz

CASE 43B-0822-R-2022
43B 45953-00

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 finding 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 to 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

This claim appeared in the Preliminary Decree with the following issue remark:

THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF DIVERSION APPEARS TO BE A DITCH, THE BOWLES-GIRDLER-NELSON DITCH.

The 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 claimants an opportunity to file additional information or evidence. On September 21, 2023 Dancing Wind LLC filed a Status Report And Proposed Issue Remark Resolution which states the means of diversion should be changed as identified in the issue remark and states “Dancing Wind has communicated the proposed issue remark resolution with the Sienkiewiczes, and the Sienkiewiczes agree with the corrections proposed by the issue remark and Dancing Wind.” The Certificate of Service confirms the Sienkiewiczes were served with copies of this Status Report And Proposed Issue Remark Resolution. No contrary response was filed. 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.

FINDING OF FACT

The Preliminary Decree states that the means of diversion is PIPELINE. The means of diversion should be DITCH. BOWLES-GIRDLER-NELSON DITCH should be added as the ditch name. The means of diversion issue remark should be removed as addressed and resolved.

CONCLUSION OF LAW

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

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Finding 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.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

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

Water Right Number: **43B 45953-00 STATEMENT OF CLAIM**

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
ALEX C SIENKIEWICZ
98 DEEP CREEK ROAD SOUTH FRK
LIVINGSTON, MT 59047

HOLLY DF SIENKIEWICZ
98 DEEP CREEK ROAD SOUTH FRK
LIVINGSTON, MT 59047 9115

DANCING WIND LLC
C/O RICHARD BERTHY
11 DREW RD
SOUTH PORTLAND, ME 04106

Priority Date: DECEMBER 31, 1934

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 25.00 GPM

Volume: 3.50 AC-FT

Households: 2

Maximum Acres: 1.00

Source Name: DEEP CREEK, SOUTH FORK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SENWSW	32	3S	10E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DITCH

Ditch Name: BOWLES-GIRDLER-NELSON DITCH

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	1.00		NENENW	6	4S	10E	PARK
Total:	1.00						