

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
PRYOR CREEK (BASIN 43E)
INTERLOCUTORY DECREE

CLAIMANT: Krista Kim, LLC

OBJECTOR: USA (Department of Interior Bureau of Indian
Affairs)

CASE 43E-0115-I-2023

43E 30071661

43E 30071668

43E 30071671

43E 30071676

43E 30071680

43E 30071682

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, conclusions 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

All water right claims that appeared in the Interlocutory Decree for Pryor Creek (Basin 43E) were subject to "issue remarks" resulting from pre-decree examination by

the DNRC, objections, and counterobjections. Each of the above-captioned claims received objections from the United States Department of Interior Bureau of Indian Affairs (“BIA”) and issue remarks during the DNRC’s claims reexamination.

The claims were consolidated into Case 43E-0115-I-2023 to resolve the objections and issue remarks.

FINDINGS OF FACT

1. Krista Kim, LLC is the record owner of claims 43E 30071661, 43E 30071668, 43E 30071671, 43E 30071676, 43E 30071680, and 43E 30071682.

2. Claims 43E 30071661, 43E 30071668, 43E 30071671, 43E 30071676, 43E 30071680, and 43E 30071682 were decreed with the following DNRC issue remarks:

43E 30071661:

THIS CLAIM IS A S.B. 355 EXEMPT CLAIM FILING THAT DID NOT APPEAR IN THE BASIN 43E DECREE ISSUED 02/25/2010 . ANY OBJECTIONS TO THIS CLAIM MUST BE FILED BY THE CLOSE OF THE NOTICE OF INTENT TO APPEAR PERIOD IN THIS BASIN.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43E DECREE ISSUED 02/25/2010.

THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

43E 30071668:

THIS CLAIM IS A S.B. 355 EXEMPT CLAIM FILING THAT DID NOT APPEAR IN THE BASIN 43E DECREE ISSUED 02/25/2010 . ANY OBJECTIONS TO THIS CLAIM MUST BE FILED BY THE CLOSE OF THE NOTICE OF INTENT TO APPEAR PERIOD IN THIS BASIN.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43E DECREE ISSUED 02/25/2010.

43E 30071671:

THIS CLAIM IS A S.B. 355 EXEMPT CLAIM FILING THAT DID NOT APPEAR IN THE BASIN 43E DECREE ISSUED 02/25/2010 . ANY OBJECTIONS TO THIS CLAIM MUST BE FILED BY THE CLOSE OF THE NOTICE OF INTENT TO APPEAR PERIOD IN THIS BASIN.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43E DECREE ISSUED 02/25/2010.

THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

NO VOLUME HAS BEEN CLAIMED.

43E 30071676:

THIS CLAIM IS A S.B. 355 EXEMPT CLAIM FILING THAT DID NOT APPEAR IN THE BASIN 43E DECREE ISSUED 02/25/2010 . ANY OBJECTIONS TO THIS CLAIM MUST BE FILED BY THE CLOSE OF THE NOTICE OF INTENT TO APPEAR PERIOD IN THIS BASIN.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43E DECREE ISSUED 02/25/2010.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 03/16/2021 , THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY USA IN TRUST FOR CROW TRIBE.

43E 30071680:

THIS CLAIM IS A S.B. 355 EXEMPT CLAIM FILING THAT DID NOT APPEAR IN THE BASIN 43E DECREE ISSUED 02/25/2010 . ANY OBJECTIONS TO THIS CLAIM MUST BE FILED BY THE CLOSE OF THE NOTICE OF INTENT TO APPEAR PERIOD IN THIS BASIN.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43E DECREE ISSUED 02/25/2010.

THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

NO VOLUME HAS BEEN CLAIMED.

43E 30071682:

THIS CLAIM IS A S.B. 355 EXEMPT CLAIM FILING THAT DID NOT APPEAR IN THE BASIN 43E DECREE ISSUED 02/25/2010 . ANY OBJECTIONS TO THIS CLAIM MUST BE FILED BY THE CLOSE OF THE NOTICE OF INTENT TO APPEAR PERIOD IN THIS BASIN.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43E DECREE ISSUED 02/25/2010.

THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

NO VOLUME HAS BEEN CLAIMED.

3. On August 10, 2023, the BIA and Krista Kim, LLC filed a *Stipulation* regarding the resolution of the objections and issue remarks appearing on claims 43E 30071661, 43E 30071668, 43E 30071671, 43E 30071676, 43E 30071680, and 43E 30071682. The *Stipulation* requests the following changes be made to the claims in this Case to resolve the Objections and address issue remarks decreed on the claims:

43E 30071661

Flow Rate:

35 ~~60.00~~ GPM

43E 30071668

Priority Date:

~~DECEMBER 31, 1910~~

JULY 22, 1924

43E 30071671

Flow Rate:

35 ~~60.00~~ GPM

Volume:

1.5 ACRE-FEET PER YEAR

43E 30071676

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	SESW	NESESE	29	5S	27E	BIG HORN

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:

<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		SESW	NESESE	29	5S	27E	BIG HORN

43E 30071680

Flow Rate: 35 ~~60.00~~ GPM

Volume: 1.0 ACRE-FEET PER YEAR

43E 30071682

Flow Rate: 35 ~~60.00~~ GPM

Volume: 6.5 ACRE-FEET PER YEAR

PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.
2. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.
3. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

4. The Water Court is not bound by parties' settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

CONCLUSIONS OF LAW

1. Based on the information received in the *Stipulation*, claims 43E 30071661, 43E 30071668, 43E 30071671, 43E 30071676, 43E 30071680, and 43E 30071682 should be modified as described in Finding of Fact No. 4. The modifications resolve the objections and substantive issue remarks appearing on the claims and the issue remarks should be removed from the claims.

2. The notice-type issue remarks appearing on each claim served their notice purpose and should be removed from the claims.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Water Master recommends that the flow rate of claim 43E 30071661 be modified to 35gpm, the priority date of claim 43E 30071668 be modified to July 22, 1924, the flow rate of claim 43E 30071671 be modified to 35gpm and the volume modified to 1.5 acre-feet per year, the point of diversion and place of use for claim 43E 30071676 be modified to SESW of Sec 29, Twp 5S, Rge 27E in Big Horn County, the flow rate of claim 43E 30071680 be modified to 35gpm and the volume modified to 1.0 acre-feet per year, and the flow rate for claim 43E 30071682 be modified to 35gpm and the volume modified to 6.5 acre-feet per year. The issue remarks should be removed from the claims.

Post decree abstracts of each water right claim reflecting the recommended changes are attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
PRYOR CREEK
BASIN 43E

Water Right Number: 43E 30071661 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: KIM, KRISTA LLC
C/O GREG OLSEN
92 NASSAU ST
PRINCETON, NJ 08542

Priority Date: DECEMBER 31, 1910

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: 35.00 GPM

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 SHIVELY CREEK

Source Type: GROUNDWATER

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		NWSWNE	10	6S	27E	BIG HORN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DEVELOPED SPRING

Period of Use: JANUARY 1 TO DECEMBER 31

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			NWSWNE	10	6S	27E	BIG HORN

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
PRYOR CREEK
BASIN 43E

Water Right Number: 43E 30071668 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: KIM, KRISTA LLC
C/O GREG OLSEN
92 NASSAU ST
PRINCETON, NJ 08542

Priority Date: JULY 22, 1924

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: UNNAMED TRIBUTARY OF HAY CREEK

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		NWNW	3	6S	27E	BIG HORN

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:

<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			NWNW	3	6S	27E	BIG HORN

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
PRYOR CREEK
BASIN 43E**

Water Right Number: 43E 30071671 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: KIM, KRISTA LLC
C/O GREG OLSEN
92 NASSAU ST
PRINCETON, NJ 08542

Priority Date: DECEMBER 31, 1910

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 35.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF SHIVELY CREEK

Source Type: GROUNDWATER

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		NWSWNE	10	6S	27E	BIG HORN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

Period of Use: JANUARY 1 TO DECEMBER 31

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			NWSWNE	10	6S	27E	BIG HORN

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
PRYOR CREEK
BASIN 43E**

Water Right Number: 43E 30071676 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: KIM, KRISTA LLC
C/O GREG OLSEN
92 NASSAU ST
PRINCETON, NJ 08542

Priority Date: DECEMBER 31, 1910

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 HAY CREEK

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		SESW	29	5S	27E	BIG HORN

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:

<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			SESW	29	5S	27E	BIG HORN

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
PRYOR CREEK
BASIN 43E**

Water Right Number: 43E 30071680 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: KIM, KRISTA LLC
C/O GREG OLSEN
92 NASSAU ST
PRINCETON, NJ 08542

Priority Date: DECEMBER 31, 1910

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 35.00 GPM

Volume: 1.00 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF SHIVELY CREEK

Source Type: GROUNDWATER

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		NESWNE	10	6S	27E	BIG HORN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

Period of Use: JANUARY 1 TO DECEMBER 31

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			NESWNE	10	6S	27E	BIG HORN

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
PRYOR CREEK
BASIN 43E**

Water Right Number: 43E 30071682 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: KIM, KRISTA LLC
C/O GREG OLSEN
92 NASSAU ST
PRINCETON, NJ 08542

Priority Date: DECEMBER 31, 1910

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 35.00 GPM

Volume: 6.50 AC-FT

Maximum Acres: 2.50

Source Name: SPRING, UNNAMED TRIBUTARY OF SHIVELY CREEK

Source Type: GROUNDWATER

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		NWSWNE	10	6S	27E	BIG HORN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

Period of Use: JANUARY 1 TO DECEMBER 31

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			NWSWNE	10	6S	27E	BIG HORN