

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

CLAIMANT: Rock Creek Ranch I LTD

CASE 43B-6007-A-2024
43B 143514-00

ORDER ON MOTION TO AMEND

On May 10, 2024, Claimant Rock Creek Ranch I LTD (“Rock Creek Ranch”) filed a Verified Motion to Amend Water Right Claim 43B 143514-00 to modify the point of diversion and the place of use.

The Water Court consolidates the claim into this case to address the motion. For the reasons set forth below, the Court grants the motion.

BACKGROUND

The Water Court included claim 43B 143514-00 in the Preliminary Decree for the Yellowstone River Above and Including Bridger Creek Basin (Basin 43B), issued on May 9, 2019. The Preliminary Decree describes the claim as a filed right to use groundwater from Hunters Hot Springs for commercial use with an April 18, 1871 priority date. The decree abstract describes the point of diversion as:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWSW	9	1S	12E	Park

The place of use is described as the NWSESW of the same Section 9. The motion asks the Court to modify the place of use quarter section reference to the SESWSW of the Section 9. The claim currently is decreed with the following place of use:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSESW	9	1S	12E	Park

The motion asks the Court to add four additional quarter-quarter-quarter section references, all in the southwest quarter section of the Section 9.

The claim did not receive any preliminary decree issue remarks based upon the reexamination¹ conducted by the Montana Department of Natural Resources and Conservation (“DNRC”), nor did it receive any objections, counterobjections, or notices of intent to appear. Due to the absence of any objections or issue remarks, the claim did not appear on the Basin 43B objection list, nor was it put in any case following issuance of the Preliminary Decree.

Claim 43B 143514-00 is based on a statement of claim filed by Harold Johnson on April 20, 1982. The statement of claim describes a water right initiated in 1871 for recreation use from a hot spring now known as Hunter’s Hot Springs.

Hunter’s Hot Springs historically was a resort that contained two hotels and numerous other facilities. Rock Creek Ranch’s motion says it intends to re-establish the hot springs and improve the facilities for users. Rock Creek Ranch hired WWC Engineering (“WWC”) to research the hot springs, visit the site, and map the historical point of diversion and places of use. When compiling evidence of the historic use of the hot springs, Rock Creek Ranch determined that the point of diversion was incorrectly claimed and the place of use did not include all the locations where the water right was used as part of the hot springs facilities. WWC determined the correct location of the point of diversion and additional places of use based on remnants of the resort still visible on the property today with comparisons to historic photographs. Those images are attached in the memorandum filed in support of the motion.

¹ The claim was subject to reexamination because it also was included in the Basin 43B Temporary Preliminary Decree issued on January 16, 1985.

WWC determined that the point of diversion, a large concrete cistern supported by distribution piping, actually is located in the SESWSW of Section 9, not in the NESWSW as originally claimed and as described in the Preliminary Decree.

WWC also identified additional historical places of use in the NESWSW, SESWSW, SWSESW, NESESW, and the SWNESW of Section 9. The place of use in the NESWSW is the location of the residence, school, and historic Hunter's Hotel. The place of use in the SESWSW has several concrete vaults, whose size and location are consistent with bathhouses. The place of use in the SWSESW contains a large vault with a piping system that appears to be the laundry hut used at the resort and smaller vaults for single-use bathhouses. The place of use in the NESESW contains the remnants of soaking areas and historical newspaper records suggest this area also had an apple orchard. The place of use in the SWNESW has concrete pads, one of which is likely the natatorium from the historic Dakota Hotel. Rock Creek Ranch's motion asks the Court to extend the decreed place of use to cover these areas of historical use. The motion does not ask for any modifications to the flow rate, volume or any other element of the claim.

ISSUE

Should the Court grant the Verified Motion to Amend Water Right Claim filed by Rock Creek Ranch?

DISCUSSION

Motions to amend are authorized under § 85-2-233(6), MCA and Rule 10, W.R.Adj.R. If the Court determines the proposed modification may adversely affect other water users, the Court requires notice and the opportunity to object before approving the modification. Section 85-2-233(6), MCA. When a party seeks to amend an element of their own water right, the party must provide sufficient evidence to prove by a preponderance of the evidence that the modification overcomes the prima facie status of the claim. Rule 19, W.R.Adj.R.; *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558. Preponderance of evidence is a relatively modest standard. *DeBuff v. Mont. Dep't of Nat. Res. & Conservation*, 2021 MT 68, ¶ 38, 403 Mont. 403.

The Water Use Act does not specifically preclude motions to amend at any particular point prior to issuance of a final decree. However, the Court looks skeptically at motions to amend filed after a claim is included in a decree and closed without objections, although such motions are not always precluded. As the Court previously has explained, such motions run the risk of being disguised as a late objection filed after the close of the objection period. *In re Brewer Ranch LLC*, 2023 Mont. Water LEXIS 393, *7 (“[i]f parties are allowed to use the motion to amend provisions to cure the failure to file a timely objection, the motion to amend provision would conflict with the objection provisions and cause the objection deadlines imposed by the legislature to become meaningless”). The Court also is wary of allowing motions to amend that seem to be efforts to avoid a change proceeding under § 85-2-402, MCA. However, the Court will allow a motion used to correct clerical-type errors. *In re Haven*, Case 42L-6003-A-2022, 2022 Mont. Water LEXIS 441.

The Water Use Act also includes provisions that protect parties when motions to amend are filed after an objection period that might otherwise provide notice. Section 85-2-233(6)(a)(i), MCA. This provision requires newspaper notice of a motion to amend “that may adversely affect other water rights.” *Id.*, see, e.g., *In re Circle S Ranch, Inc.*, Case 41P-108, 2019 Mont. Water LEXIS 8 (Order on Motion to Modify Claims); *In re Carol Nickelson Trust*, Case 43B-6005, 2024 Mont. Water LEXIS 78.

This case falls in the category of a post-decree motion to amend, which receives a high degree of scrutiny from the Court. The Court first examines the motion to determine whether it may be a disguised late objection. Unfortunately, Rock Creek Ranch gave no specific explanation why it did not self-object to the point of diversion and place of use elements during the Basin 43B objection period. However, the Court can infer that the motion is based on newly discovered historical evidence that Rock Creek Ranch uncovered as it compiled “information relating to the historic use of the hot springs” as part of “plans to re-establish the hot springs to its historic use and improve the facilities for users of the springs.” Motion, ¶ 4. As the memorandum attached to the motion indicates, the motion provides a fair amount of detail about the historical use. There is no

indication this information was available to Rock Creek Ranch during the objection period.

The second question is whether notice should be required. The nature of this motion indicates it is unlikely the motion will lead to a modified water use causing adverse effect to other water users. The point of diversion modification is akin to a clerical correction to better refine the legal description for the same physical point of diversion described in the Preliminary Decree. Although the place of use modification covers more land than what was decreed, Rock Creek Ranch does not seek any modification to the largely non-consumptive commercial use of the claim. Unlike an expanded irrigation place of use which likely would increase consumption, the modified place of use does suggest any increased burden on the source. The Court concludes the amendments will not adversely affect other water users, so no further notice is necessary.

Rock Creek Ranch's motion meets the standard for motions to amend. The evidence provided by Rock Creek Ranch proves that the new point of diversion legal land description and additional places of use reflect what historically serviced the hot springs resort.

ORDER

Therefore, it is ORDERED that Rock Creek Ranch's Verified Motion to Amend Water Right Claim is GRANTED. The point of diversion for claim 43B 143514-00 is modified to:

<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			SESWSW	9	1S	12E	PARK

The place of use for claim 43B 143514-00 is modified to:²

<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			SWNESW	9	1S	12E	PARK
2			NESWSW	9	1S	12E	PARK
3			SESWSW	9	1S	12E	PARK

² The Court has sequenced the place of use to conform to standards used by the Public Land Survey System. *See* https://www.ntc.blm.gov/krc/system/files?file=legacy/uploads/22504/BLM_Module2_Studyguide.pdf.

4	NESESW	9	1S	12E	PARK
5	NWSESW	9	1S	12E	PARK
6	SWSESW	9	1S	12E	PARK

A post-decree abstract of claim 43B 143514-00 is included with this Order to confirm the amendments have been made in the State's centralized water rights record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

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

Water Right Number: 43B 143514-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ROCK CREEK RANCH I LTD
100 WAUGH DR, SUITE 400
HOUSTON, TX 77007-5962

Priority Date: APRIL 18, 1871

Type of Historical Right: FILED

Purpose (Use): COMMERCIAL

Flow Rate: 3.34 CFS

Volume: 1,212.86 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: HUNTERS HOT SPRINGS

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		SESWSW	9	1S	12E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

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			SWNESW	9	1S	12E	PARK
2			NESWSW	9	1S	12E	PARK
3			SESWSW	9	1S	12E	PARK
4			NESESW	9	1S	12E	PARK
5			NWSESW	9	1S	12E	PARK
6			SWSESW	9	1S	12E	PARK