

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

FILED
03/08/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
40T-0003-I-2023
Weisz, Madeleine
16.00

IN THE WATER COURT OF THE STATE OF MONTANA
ST. MARY RIVER – BASIN 40T
INTERLOCUTORY DECREE

CLAIMANT: Grizzly Ridge Bison Ranch, LLC

OBJECTORS: Blackfeet Tribe; United States of America
(Bureau of Indian Affairs)

CASE 40T-0003-I-2023
40T 30123404
40T 30123405
40T 30123415

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
FINDINGS OF FACT

1. Claims 40T 30123404, 40T 30123405, and 40T 30123415 appeared in the 40T Interlocutory Decree. The claims received objections from the United States Bureau of Indian Affairs (the United States) and the Blackfeet Tribe.

2. On September 14, 2023, the parties filed a Stipulation to resolve the objections in this case. (Doc.¹ 11.00).

The Stipulation did not address an issue remark appearing on claim 40T 30123405 and a filing deadline was set for the issue remark to be addressed. On February 15, 2024, a subsequent Stipulation was filed. (Doc. 15.00) The second Stipulation makes clear that it is supplemental to the September 14, 2023 Stipulation and that the parties agree to the terms of both Stipulations.

3. The parties agree that the place of use for claim 40T 30123404 should be amended to reflect the following modifications to the points of diversion and places 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			SWNENW	17	37N	12W	GLACIER
Period of Diversion: JANUARY 1 TO DECEMBER 31							
Diversion Means: LIVESTOCK DIRECT FROM SOURCE							
<u>2</u> ₁			E2NWNW	17	37N	12W	GLACIER
Period of Diversion: JANUARY 1 TO DECEMBER 31							
Diversion Means: LIVESTOCK DIRECT FROM SOURCE							
3			NWSENW	17	37N	12W	GLACIER
Period of Diversion: JANUARY 1 TO DECEMBER 31							
Diversion Means: LIVESTOCK DIRECT FROM SOURCE							
<u>4</u> ₂			NESWNW	17	37N	12W	GLACIER
Period of Diversion: JANUARY 1 TO DECEMBER 31							
Diversion Means: LIVESTOCK DIRECT FROM SOURCE							

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

4. Claim 40T 30123405 appeared in the Interlocutory Decree with an issue remark that states:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.

The parties agree that the point of diversion and place of use for claim 40T 30123405 should be reduced to the SESWNW of Section 17, 37N, 12W, Glacier County. Reducing the claimed point of diversion and place of use results in a legal land description that does not overlap with the legal land description for claim 40T 30123394 and therefore resolves the duplicate filings issue remark.

5. The parties agree that claim 40T 30123415 should be dismissed from the adjudication.

6. Claims 40T 30123404 and 40T 30123405 each received the following issue remarks during DNRC claim examination:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 40T DECREE ISSUED 06/25/2014.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 03/25/2021 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY GRIZZLY RIDGE BISON RANCH LLC.

The first remark is considered a notice issue remark. It puts other water users on notice that the claim has not been decreed before. The remark does not raise issues that require further proceedings before the court. It has served its purpose of providing notice and should be removed from both claims.

The second issue remark provides notice that ownership information may need attention. Grizzly Ridge is now listed as the owner of these claims. The issue remarks appear to be outdated and should be removed from the claims.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 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. Rule 19, W.R.Adj.R.

2. The claimant of a water right claim may waive the advantage of § 85-2-227, MCA by requesting a reduction or limitation of an element of a water right claim. The water court may accept a claimant's requested reduction or limitation without further presentation of evidence unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R. The requested modifications to the points of diversion and places of use for claims 40T 30123404 and 40T 30123405 constitute reductions to the claims and may be accepted without further presentation of evidence.

3. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA. The issue remarks appearing on the claims in this case do not overcome the prima facie status of the claims. The duplicate claim issue remark appearing on claim 40T 30123405 is resolved by the claimants' agreement to reduce the place of use to avoid overlap with claim 40T 30123394. The other issue remarks appearing on the claims in this case are considered notice issue remarks that have served their purpose and may be removed.

4. Settlement agreements are subject to review and approval of the Water Court. Rule 17(a), W.R.Adj.R. The settlement documentation in this Case should be accepted by the Court.

RECOMMENDATIONS

1. Claims 40T 30123404 and 40T 30123405 should be modified as provided above.
2. The issue remarks should be removed from claims 40T 30123404 and 40T 30123405.
3. Claim 40T 30123415 should be dismissed from the adjudication.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail:

Derek E. Kline
Attorney at Law
PO Box 223
East Glacier Park, MT
(406) 338-7777
tgilham@blackfeetnation.com
derekekline@gmail.com

Rebecca M. Ross
U.S. Department of Justice
Indian Resources Section, ENRD
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044
(202) 305-0269
Rebecca.Ross@usdoj.gov
IRSMontanaWater.enrd@usdoj.gov

Renee L. Coppock
Madeline M. Clarke
Crowley Fleck PLLP
PO Box 2529
Billings, MT 59103-2529
(406) 252-3441
rcoppock@crowleyfleck.com
acowen@crowleyfleck.com
mclarke@crowleyfleck.com

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
ST. MARY RIVER
BASIN 40T**

Water Right Number: 40T 30123404 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: GRIZZLY RIDGE BISON RANCH, LLC
1395 S PLATTE RIVER DR
DENVER, CO 80223

Priority Date: OCTOBER 19, 1923

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 HALL COULEE

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		E2NWNW	17	37N	12W	GLACIER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		NESWNW	17	37N	12W	GLACIER
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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:**

<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			E2NWNW	17	37N	12W	GLACIER
2			NESWNW	17	37N	12W	GLACIER

Remarks:

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE BLACKFEET INDIAN RESERVATION.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
ST. MARY RIVER
BASIN 40T**

Water Right Number: 40T 30123405 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: GRIZZLY RIDGE BISON RANCH, LLC
1395 S PLATTE RIVER DR
DENVER, CO 80223

Priority Date: AUGUST 12, 1965

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 HALL COULEE

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		SESWNW	17	37N	12W	GLACIER

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			SESWNW	17	37N	12W	GLACIER

Remarks:

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE BLACKFEET INDIAN RESERVATION.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
ST. MARY RIVER
BASIN 40T

Water Right Number: 40T 30123415 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: GRIZZLY RIDGE BISON RANCH, LLC
1395 S PLATTE RIVER DR
DENVER, CO 80223

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: SPRING, UNNAMED TRIBUTARY OF WILLOW CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.