

Montana Water Court
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**IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
SWEET GRASS – BASIN 43BV
PRELIMINARY DECREE**

CLAIMANT: Ward & Parker Ranch LLC

CASE 43BV-0358-R-2024

43BV 138985-00

OBJECTOR: United States of America (USDA Forest
Service)

COUNTEROBJECTOR: John Cosgriff

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. Ward & Parker Ranch, LLC (Ward & Parker) is the record owner of claim 43BV 138985-00.

2. Claim 43BV 138985-00 was decreed with DNRC issue remarks:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 48.00 GPM PER ACRE.
THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED DECREE IS 11/16/1931.

All issue remarks must be addressed.

3. The United States of America (USDA Forest Service) objected to claim 43BV 138985-00.

4. John R. Cosgriff, of Ward & Parker Ranch, LLC, filed a statement on a Counterobjection form:

9. State the changes you think should be made to this claim and why. State the specific grounds and evidence on which the Counterobjection is based. (Use additional paper if necessary.)

This is a 90 year old water right - the creek is a mountain creek which changes its stream bed.

The statement appears to be a response to the Forest Service Objection, not a Counterobjection.

5. Documents settling the Objection in Case 43BV-0358-R-2024 were filed on April 10, 2025. (Doc.¹ 7.00). The *Stipulation to Resolve Objections* indicates the Forest Service’s Objection to claim 43BV 138985-00 will be resolved if the following modification is made to the point of diversion legal land description:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Ree</u>	<u>County</u>
1	SWSWSE	NENENW	9-18	4N	12E	SWEET GRASS

6. The *Stipulation to Resolve Objections* did not address the issue remarks decreed on claim 43BV 138985-00.

As claim 43BV 138985-00 is a decreed claim, the flow rate issue remark does not require further attention – it will be removed from the claim.

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

7. Nothing was filed addressing the priority date issue remark. Information in the claim suggested the priority date for claim 43BV 138985-00 should be November 16, 1931:

22 Ralph E. Cosgriff is the successor to R. C. Ward and
23 E. A. Parker, a co-partnership, who, on November 16, 1931,
24 filed a notice of appropriation of 150 miner's inches of the
25 waters of Hell Roaring Creek and placed the waters to beneficial
26 use; such water is not presently decreed; Ralph E. Cosgriff
27 now uses, and he or his predecessors did use, prior to the
28 filing of the petition herein, such water to irrigate pasture
29 and/or crop lands owned by Ralph E. Cosgriff situated in the
30 SE¼ of Section 9, Township 4 North, Range 12 East, M.P.M., Sweet
31 Grass County, Montana; such waters are therefore being put to
32 a beneficial use on the land described; Ralph E. Cosgriff is

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1 therefore entitled to a decree of 150 miner's inches for said
2 waters, such right having a priority date of November 16, 1931,
3 the date the petition herein was filed.

An Order was issued setting a deadline for Ward & Parker to agree or disagree that the priority date for claim 43BV 138985-00 should be modified from April 20, 1930 to November 16, 1931, resolving the priority date issue remark. (Doc. 8.00). On April 30, 2025, John R. Cosgriff filed a Statement on behalf of Ward & Parker indicating agreement with the proposed November 16, 1931 priority date for claim 43BV 138985-00. (Doc. 9.00).

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.
2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right

claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

The information in the record is sufficient to overcome the prima facie status of the claim as to the priority date and point of diversion of claim 43BV 138956-00. Claim 43BV 138956-00 should be modified to correct the priority date and point of diversion as discussed in the Findings of Facts.

RECOMMENDATIONS

1. The point of diversion for claim 43BV 138985-00 should be modified, resolving the Forest Service Objection:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	SWSWSE	NENENW	9-18	4N	12E	SWEET GRASS

2. The priority date for claim 43BV 138985-00 should be modified from April 20, 1930 to November 16, 1931.

3. The issue remarks should be removed from claim 43BV 138985-00.

4. John R. Cosgriff’s Counterobjection should be dismissed.

An abstract is attached from review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

John Cosgriff
Ward & Parker Ranch, LLC
1029 Otter Creek Rd
Big Timber, MT 59011
(406) 932-4104

Service via Electronic Mail

Mark J. Widerschein
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SWEET GRASS CREEK
BASIN 43BV**

Water Right Number: 43BV 138985-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: WARD & PARKER RANCH LLC
1029 OTTER CREEK RD
BIG TIMBER, MT 59011

Priority Date: NOVEMBER 16, 1931

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.75 CFS

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

Climatic Area: 3 - MODERATE

Maximum Acres: 35.00

Source Name: HELL ROARING 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		SWSWSE	9	4N	12E	SWEET GRASS

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 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	35.00		S2SE	9	4N	12E	SWEET GRASS

Total: 35.00