

Montana Water Court  
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**FILED**  
01/30/2024  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
43A-0538-R-2021  
White, Eugene  
29.00

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
SHIELDS RIVER BASIN 43A  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANT: Brackett Creek Ranch, Inc.

NOTICE OF INTENT TO APPEAR: Amber Ranch, LLC

**CASE 43A-0538-R-2021**

43A 192984-00  
43A 192985-00  
43A 192986-00  
43A 192987-00  
43A 192989-00  
43A 192990-00

**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 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**

The above-captioned claims appeared in the Preliminary Decree for Basin 43A. The claims did not receive objections, counterobjections, but did receive a notice of intent to appear ("NOIA") and issue remarks during the DNRC's claims reexamination.

The claims were consolidated into Case 43A-0538-R-2021 to resolve the issue remarks and NOIA.

### FINDINGS OF FACT

1. A Status Conference for Case 43A-0538-R-2021 took place on September 1, 2021, by telephone conference call. Water Master Eugene C. White presided; Ross Keogh appeared on behalf of NOIA party Westering Home, LLC; a representative for claimant Bracket Creek Ranch, Inc (“Bracket Creek Ranch”) did not appear at the conference.

2. On September 3, 2021, the Court issued an Order Requiring DNRC Conference for the Claimant to work with the DNRC to resolve the issue remarks.

3. On March 10, 2022, DNRC Water Resource Specialist Mary Crable filed a *Memorandum* in this matter. In her *Memo*, Ms. Crable states that the DNRC was contacted by Suzanne Nellen, counsel for claimant Bracket Creek Ranch. Ms. Crable’s *Memo* goes on to state that the DNRC did not have any additional information regarding the acres irrigated, and that the Claimant had offered to provide additional information but argued that the acres irrigated were previously adjudicated negating the need for any additional information.

4. On June 20, 2022, the Court set a filing deadline for NOIA party Westering Homes, LLC to comment on the potential resolution of removing the issue remarks without alteration to the claims and whether that would resolve its NOIA.

5. On July 21, 2022, NOIA party Amber Ranch, LLC (“Amber Ranch”) filed a *Motion for Substitution of Party* requesting that Amber Ranch be substituted for previous NOIA party Westering Homes, LLC.

6. The Court issued an Order Substituting Parties on July 29, 2022.

7. On June 21, 2022, Amber Ranch filed a *Conditional Withdrawal* of its NOIA’s to the above-captioned claims. The *Conditional Withdrawal* States that Amber Ranch’s concerns were resolved during a May 2023 meeting with Bracket Creek Ranch, and that Amber Ranch does not intend to participate in the resolution of the remaining issue remarks.

8. On August 2, 2023, the Water Court issued a *Second Order Requiring DNRC Conference* for the Claimant to work with DNRC to address and resolve the remaining issue remarks appearing on the claims.

9. On September 21, 2023, DNRC Water Resources Specialist Tucker Hamling filed a *Memorandum* in this matter. Mr. Hamling's *Memo* states that he spoke with Claimant and Counsel for the Claimant, Suzanne Nellen, on August 24, 2023, but that no new information was presented to the DNRC. Therefore, the DNRC recommended that the issue remarks remain until they could be addressed through continued Water Court proceedings.

10. On September 26, 23, counsel for claimant Bracket Creek Ranch, Suzanne Nellen, spoke with Water Master Eugene White by telephone, and discussed requesting a filing deadline for Bracket Creek Ranch to file additional information that would resolve the issue remarks.

11. On September 29, 2023, claimant Bracket Creek Ranch filed a *Status Report and Notice of Further Research*. The *Status Report* requested a filing deadline of November 3, 2023, be set for Bracket Creek Ranch to file the results of its additional research regarding the issue remarks.

12. On November 3, 2023, claimant Bracket Creek Ranch filed a *Status Report* containing information recovered during its additional research regarding the acres irrigated of claims 43A 192985-00, 43A 192987-00, and 43A 192989-00. The *Status Report* requests the following reduction to the place of use and acres irrigated for the claims:

The acres historically irrigated, based on the above, is more accurately described as

follows:

ID	ACRES	QTR	SEC	TWP	RGE	COUNTY
1.	20	E1/2	33	2N	8E	Park
2.	25	NWSW	33	"	"	"
3.	3	SWNE	33	"	"	"
4.	104	E2SW	34	"	"	"
5.	23.5	SE	34	"	"	"
6.	95	NW	34	"	"	"

**TOTAL ACREAGE: 270.5 acres**

13. On November 14, 2023, Amber Ranch filed a *Request to Dismiss Notice of Intent to Appear*. The *Request* states that, “[t]here are no remaining unresolved issues in which Amber Ranch intends to participate. Therefore, Amber Ranch unconditionally withdraws all NOIAs filed against the claims consolidated in this case.”

14. Each of the claims also received a notice-type issue remark from the DNRC during its claims reexamination. No objections were filed.

#### 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. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

#### CONCLUSIONS OF LAW

1. The evidence in the record is sufficient to resolve the issue remarks placed on the above-captioned claims.

2. The information and subsequent reduction in acres irrigated found in Brackett Creek Ranch's November 3, 2023 *Status Report* may be accepted without further presentation of evidence per Rule 17(c), W.R.Adj.R. The modifications to the place of use and acres irrigated for claims 43A 192985-00, 43A 192987-00, and 43A 192989-00 should be made as described in Finding of Fact No. 12 and the issue remarks should be removed.

3. Amber Ranch's NOIA is resolved based on the *Conditional Withdrawal* filed on June 21, 2023, and the *Request to Dismiss Notice of Intent to Appear* filed on November 14, 2023.

4. The notice type issue remarks appearing on claims 43A 192985-00, 43A 192987-00, and 43A 192989-00 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 Court modify the place of use and acres irrigated of claims 43A 192985-00, 43A 192987-00, and 43A 192989-00 as described in Finding of Fact No. 12 and remove all issue remark from the above-captioned claims.

Post decree abstracts of the water right claims 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  
SHIELDS RIVER  
BASIN 43A**

**Water Right Number:** 43A 192984-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** BRACKETT CREEK RANCH INC  
%TURNER ERNEST J  
PO BOX 350  
CLYDE PARK, MT 59018

**Priority Date:** APRIL 15, 1891

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**\*Flow Rate:** 170.00 GPM

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

**Climatic Area:** 4 - MODERATELY LOW

**\*Maximum Acres:** 16.00

**Source Name:** BRACKETT 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		NESESW	31	2N	8E	PARK

**\*Period of Diversion:** MAY 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** WARD-HANSEN DITCH

**\*Period of Use:** MAY 15 TO OCTOBER 15

**\*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	11.00		NESE	32	2N	8E	PARK
2	5.00		N2SESE	32	2N	8E	PARK
<b>Total:</b>	<b>16.00</b>						

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

192984-00	192985-00	192986-00	192987-00	192988-00	192989-00
192990-00	192991-00				

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SHIELDS RIVER  
BASIN 43A**

**Water Right Number:** 43A 192985-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** BRACKETT CREEK RANCH INC  
%TURNER ERNEST J  
PO BOX 350  
CLYDE PARK, MT 59018

**Priority Date:** JUNE 1, 1888

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.38 CFS

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

**Climatic Area:** 4 - MODERATELY LOW

**\*Maximum Acres:** 270.50

**Source Name:** BRACKETT 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		NESES	31	2N	8E	PARK

**\*Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** WARD-HANSEN DITCH

**\*Period of Use:** APRIL 15 TO OCTOBER 15

**\*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	20.00		E2	33	2N	8E	PARK
2	25.00		NWSW	33	2N	8E	PARK
3	3.00		SWNE	33	2N	8E	PARK
4	104.00		E2SW	34	2N	8E	PARK
5	23.50		SE	34	2N	8E	PARK
6	95.00		NW	34	2N	8E	PARK

**Total:** 270.50

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**Remarks:**



THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

192984-00	192985-00	192986-00	192987-00	192988-00	192989-00
192990-00	192991-00				

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SHIELDS RIVER  
BASIN 43A**

**Water Right Number:** 43A 192986-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** BRACKETT CREEK RANCH INC  
%TURNER ERNEST J  
PO BOX 350  
CLYDE PARK, MT 59018

**Priority Date:** APRIL 15, 1891

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**\*Flow Rate:** 40.40 GPM

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

**Climatic Area:** 4 - MODERATELY LOW

**\*Maximum Acres:** 16.00

**Source Name:** BRACKETT 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		NESESW	31	2N	8E	PARK

**\*Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** WARD-HANSEN DITCH

**\*Period of Use:** APRIL 15 TO OCTOBER 15

**\*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	11.00		NESE	32	2N	8E	PARK
2	5.00		N2SESE	32	2N	8E	PARK
<b>Total:</b>	<b>16.00</b>						

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

192984-00	192985-00	192986-00	192987-00	192988-00	192989-00
192990-00	192991-00				

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SHIELDS RIVER  
BASIN 43A**

**Water Right Number:** 43A 192987-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** BRACKETT CREEK RANCH INC  
%TURNER ERNEST J  
PO BOX 350  
CLYDE PARK, MT 59018

**Priority Date:** JUNE 22, 1904

**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:** 4 - MODERATELY LOW

**\*Maximum Acres:** 270.50

**Source Name:** BRACKETT 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		NESESW	31	2N	8E	PARK

**\*Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** WARD-HANSEN DITCH

**\*Period of Use:** APRIL 15 TO OCTOBER 15

**\*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	20.00		E2	33	2N	8E	PARK
2	25.00		NWSW	33	2N	8E	PARK
3	3.00		SWNE	33	2N	8E	PARK
4	104.00		E2SW	34	2N	8E	PARK
5	23.50		SE	34	2N	8E	PARK
6	95.00		NW	34	2N	8E	PARK

**Total:** 270.50

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

192984-00	192985-00	192986-00	192987-00	192988-00	192989-00
192990-00	192991-00				

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SHIELDS RIVER  
BASIN 43A**

**Water Right Number:** 43A 192989-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** BRACKETT CREEK RANCH INC  
%TURNER ERNEST J  
PO BOX 350  
CLYDE PARK, MT 59018

**Priority Date:** JUNE 1, 1884

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 283.00 GPM

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

**Climatic Area:** 4 - MODERATELY LOW

**\*Maximum Acres:** 270.50

**Source Name:** BRACKETT 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		NESESW	31	2N	8E	PARK

**\*Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** WARD-HANSEN DITCH

**\*Period of Use:** APRIL 15 TO OCTOBER 15

**\*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	20.00		E2	33	2N	8E	PARK
2	25.00		NWSW	33	2N	8E	PARK
3	3.00		SWNE	33	2N	8E	PARK
4	104.00		E2SW	34	2N	8E	PARK
5	23.50		SE	34	2N	8E	PARK
6	95.00		NW	34	2N	8E	PARK

**Total:** 270.50

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

192984-00	192985-00	192986-00	192987-00	192988-00	192989-00
192990-00	192991-00				

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SHIELDS RIVER  
BASIN 43A**

**Water Right Number:** 43A 192990-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** BRACKETT CREEK RANCH INC  
%TURNER ERNEST J  
PO BOX 350  
CLYDE PARK, MT 59018

**Priority Date:** NOVEMBER 15, 1899

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**\*Flow Rate:** 126.00 GPM

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

**Climatic Area:** 4 - MODERATELY LOW

**\*Maximum Acres:** 16.00

**\*Source Name:** BRACKETT 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		NESES	31	2N	8E	PARK

**\*Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** WARD-HANSEN DITCH

**\*Period of Use:** APRIL 15 TO OCTOBER 15

**\*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	5.00		N2SESE	32	2N	8E	PARK
2	11.00		NESE	32	2N	8E	PARK
<b>Total:</b>	<b>16.00</b>						

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

192984-00	192985-00	192986-00	192987-00	192988-00	192989-00
192990-00	192991-00				