

Montana Water Court  
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FILED

JUN 08 2020

Montana Water Court

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

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CLAIMANT: CJA Properties LLC

43A-0042-R-2020

43A 11577-00

43A 24692-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. Because this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this 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 43A 11577-00 and 43A 24692-00 were decreed with the following DNRC issue remarks:

**Claim 43A 11577-00:**

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON SHEILDS RIVER WITH A PRIORITY DATE PREDATED CASE NO 2717, PARK COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

**Claim 43A 24692-00:**

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON SMITH CREEK WITH A PRIORITY DATE PREDATING CASE NO 2717, PARK COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

2. No objections or notices or intent to appear were filed.

### PRINCIPLES AND CONCLUSIONS OF LAW

1. 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.

2. With respect to the priority date of the claims in this Case, the only evidence before the Court is the existence of Case 2717 on the Shields River and Smith Creek and the resulting issue remark that appeared on the claims. While historical decrees provide some evidence of existing water rights on a given source, they are not conclusive. Decrees were often the result of a specific controversy between water users; thus, rights were adjudicated on a piecemeal basis by the district courts. Further, decrees were usually limited in scope, and often multiple decrees were issued on the same stream. *See Albert Stone, Are There Any Adjudicated Streams in Montana?* 19 Mont. L. Rev. 19 (1957).

In short, there are numerous reasons why the claims in this Case may not have appeared in the earlier District Court decree, but objectors bear the burden of establishing that the priority date should be something other than what was claimed. In this Case, the prima facie proof of priority date has not been overcome.

RECOMMENDATION

1. The issue remark should be removed from the claims with no changes to the elements of the claims.

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

DATED this 8<sup>th</sup> day of June, 2020.



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Anika M. Stern  
Senior Water Master

**Service via Electronic Mail**

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