

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

ELECTRONICALLY FILED

43A-0073-R-2020

December 20, 2021

Montana Water Court

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

* * * * *

CLAIMANTS: Muffie B. Murray; Stephen Murray; Joe C. Poteat
Revocable Trust

43A-0073-R-2020
43A 191295-00

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, conclusion 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 claim appeared in the Preliminary Decree for Basin 43A. The claim did not receive objections or notices of intent to appear but did receive issue remarks during the DNRC's review of the claims.

The claim was consolidated into Case 43A-0073-R-2020 to resolve the issue remark.

FINDINGS OF FACT

1. Claim 43A 191295-00 received an issue remark stating that the point of diversion legal land description could not be refined from information in the claim file.
2. On July 15, 2020, the Court ordered claimants to work with the DNRC to address the issue remark pertaining to the point of diversion for claim 43A 191295-00.
3. On January 26, 2021, DNRC Water Resource Specialist Mary Crable filed her *Memorandum* in this matter. Ms. Crable's *Memo* states that she was contacted by Maggie Stein on behalf of the Murrays and that the DNRC contacted Joe C. Poteat Revocable Trust on October 7, 2020. But after multiple requests for extension, the DNRC did not have the information necessary to provide a recommendation in addressing the issue remark.
4. On March 24, 2021, claimants Muffie B. Murray and Stephen Murray filed a *Withdrawal of Claim* for claim 43A 191295-00 upon determining that "there is no evidence of irrigation on Claimant's portion of the property."
5. On April 28, 2021, the Court set another filing deadline for claimant Joe C. Poteat Revocable Trust to file information or evidence disputing or correcting the legal land description for claim 43A 191295-00. Nothing was filed by the ordered deadline.
6. Claim 43A 191295-00 also received a notice-type issue remark. No objections were filed to the claim.

PRINCIPLES 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; Rule 10, W.R.Adj.R.
2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.
3. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. 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.

6. 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.

7. 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.

CONCLUSIONS OF LAW

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

2. Pursuant to the *Withdrawal of Claim* filed on March 24, 2021, Muffie B. Murray and Stephen Murray should be removed as claimants from claim 43A 191295-00.

3. The evidence supporting the issue remark on claim 43A 191295-00-00 does not overcome the prima facie status of the Statement of Claim and the issue remark should be removed.

4. The notice-type issue remark on claim 43A 191295-00 served its notice purpose and should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

Eugene C. White
Water Master

Water Master

Service via USPS Mail:

Maggie W. Stein
Goodrich & Reely, PLLC
P. O. Box 1899
Billings, Mt 59103-1899

Joe C. Poteat Revocable Trust
124 Walton Rd.
Wilsall, MT 59086-9421

Joe Poteat
151 Covery Ct.
Bozeman, MT 59718-8418

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

Water Right Number: 43A 191295-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: POTEAT, JOE C REVOCABLE TRUST
PO BOX 400
DAVIDSON, NC 28036 0400

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE OWNERS.

Priority Date: NOVEMBER 27, 1905

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.00 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: 172.50

Source Name: BENNETT 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	24	5N	10E	PARK

Period of Diversion: APRIL 30 TO OCTOBER 15

Diversion Means: DIKE

Period of Use: APRIL 30 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	10.00		NWSW	24	5N	10E	PARK
2	10.00		SWNW	24	5N	10E	PARK
3	40.00		SWNE	23	5N	10E	PARK
4	35.00		SENW	23	5N	10E	PARK
5	7.00		SESWNW	23	5N	10E	PARK
6	2.50		NWSW	23	5N	10E	PARK
7	2.00		NESW	23	5N	10E	PARK
8	8.00		SESW	23	5N	10E	PARK
9	10.00		SWSE	23	5N	10E	PARK
10	10.00		NWSE	23	5N	10E	PARK

11	4.00		23	5N	10E	PARK
12	2.00		23	5N	10E	PARK
13	4.00	NESE	23	5N	10E	PARK
14	8.00	SENE	23	5N	10E	PARK
15	10.00	SESE	23	5N	10E	PARK
16	10.00		23	5N	10E	PARK
Total:	<u>172.50</u>					