

Montana Water Court
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43A-0291-R-2021

December 7, 2021

Montana Water Court

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

CLAIMANTS: Fastje Ranches, Inc.; Guy E. Chriske Revocable
Living Trust Agreement

CASE 43A-0291-R-2021

43A 29041-00

43A 191629-00

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

All water right claims that appeared in the Preliminary Decree for this Basin were subject to issue remarks resulting from pre-decree examination by the DNRC, objections, and counterobjections. The above-captioned claims did not receive objections or notices of intent to appear, but did receive issue remarks from the DNRC during its claims reexamination denoting a overfiled notice of appropriation.

The claims were consolidated into Case 43A-0291-R-2021 to resolve the issue remarks and potential overfiled notice of appropriation situation.

FINDINGS OF FACT

1. Claims 43A 29041-00 and 43A 191629-00 each received an issue remark from the DNRC stating that:

THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 43A 191629-00, 43A 29041-00.

2. A Status Conference for Case 43A-0291-R-2021 took place on June 2, 2021 by telephone conference call. Water Master Eugene C. White presided; Robert Fastje appeared for the conference on behalf of Fastje Ranches, Inc.; Guy E. Chriske was present on behalf of Guy E. Chriske Revocable Living Trust Agreement. During the conference, the Court discussed the issue remarks appearing on the claims and potential resolution for the overfiled notice of appropriation.

3. On May 6, 2021, Claimant Guy E. Chriske Revocable Living Trust filed a *Request to Withdraw Statement of Claim* for claim 43A 191629-00. The *Request to Withdraw* includes a statement made and signed by all parties stating that the withdrawal of claim 43A 191629-00, along with Fastje Ranches Inc. request to reduce the flow rate for claim 43A 29042-00 from 5.34cfs(213.6MI) to 3.75cfs (150MI) would resolve the overfiled notice of appropriation situation.

4. Claim 43A 29042-00 also received notice type issue remarks denoting modifications made by the DNRC during its claims reexamination. Each remark states

that if no objections are filed, they will be removed. No objections were filed.

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. 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.
5. 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.
6. 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.
7. The party seeking to overcome the prima facie status of a Statement of Claim bears the burden of proof; this burden also applies to a claimant’s objection to his own claim. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.
8. 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. Based on the Claimant Guy E. Chriske Revocable Living Trust's *Withdrawal* of claim 43A 191629-00 the claim should be dismissed pursuant to Rule 17(c), W.R.Adj.R.
2. The aforementioned *Withdrawal* along with the reduction in flow rate for claim 43A 29042-00 as listed in Finding of Fact No. 3 resolves the issue remark appearing on claim 43A 29042-00 and any potential overfiling of the notice of appropriation.
3. The notice-type issue remarks appearing on claim 43A 29042-00 served their notice purpose and should be removed from the claim.

RECOMMENDATION

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

Post decree abstracts of the water right claims, reflecting the recommended changes, are attached to this Report.

Eugene C. White
Water Master

Service via USPS Mail:

Fastje Ranches, Inc.
c/o Robert Fastje
2110 Flathead Creek Rd W
Wilsall, MT 59086-9538
406-578-2357

Guy E Chriske Revocable Living Trust Agreement
3402 Flathead Creek Rd W
Wilsall, MT 59086-9536

43A-0291-R-2021

July 23, 2021

REQUEST TO WITHDRAW STATEMENT OF CLAIM OR INTEREST IN STATEMENT OF CLAIM

Montana Water Court

I/We, Ray & Chriska Revocable Living Trust hereby request the withdrawal or withdrawal of interest of Statement of Claim Number 43A 191629-00.

The reason for this request is:

I/We have an existing right which is exempt from filing.

This claim was for a use of water after July 1, 1973.

I/We have no existing water right to claim.

I/We have no interest in said Statement of Claim

Other/Comments:

Statement Signed by Owner:

I declare under penalty of perjury (§ 45-7-201, MCA) under the laws of the state of Montana that the foregoing content of this form is true and correct. I further declare that I have the authority to sign this document for myself as an individual or in representational capacity as an officer of a corporation, member of a limited liability company, general partner of a limited partnership, trustee for a trust or other official capacity for an entity as defined under "person" in §85-2-102, MCA. (All current owners of the right as listed in the DNRC centralized record system are required to sign. Please attach DNRC's Withdrawal Agreement form if additional owner signatures are needed.)

July 19 2021
(Date Signed)

Ray & Chriska
(Signature of Claimant)

Trustee
(Office or Title)

(Date Signed)

(Signature of Claimant)

(Office or Title)

(Date Signed)

(Signature of Claimant)

(Office or Title)

(Date Signed)

(Signature of Claimant)

(Office or Title)

Case 43A-0291-R-2021:
Date: 7/19/2021
To: Montana Water Court
Attn: Water Master Eugene C. White

Water Master White,

Water rights 43A 29041-00 and 43A 191629-00 contain this issue remark:



THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 43A 29041-00, 43A 191629-00.

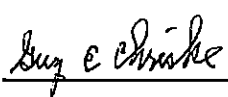
Both claimants agree that claimant Guy E. Chriske Revocable Living Trust Agreement will withdraw claim 43A 191629-00. The withdrawal form is attached and signed by Guy E. Chriske, representative of the Trust.

Fastje Ranches Inc. would like to clarify the claimed flow rate from 5.34 cfs (213.6 MI) to 3.75 cfs (150MI) for water right 43A 29041-00.

With Guy E. Chriske Revocable Living Trust Agreement withdrawing claim 43A 191629-00 and Fastje Ranches clarifying the flowrate of claim 43A 29042-00, there no longer exists an issue where the original filed appropriation is exceeded.

SIGNATURES:

by  
Signed and dated this 19th day of July, 2021 2110 Flathead Creek Road West
Wilsall, MT 59086

by  Guy E. Chriske Revocable Living Trust
Signed and dated this 19th day of July, 2021 3402 Flathead Creek Rd. W.
Wilsall, mt. 59086

by _____
Signed and dated this 19th day of July, 2021

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
SHIELDS RIVER
BASIN 43A**

Water Right Number: 43A 29041-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: FASTJE RANCHES INC
%ROBERT FASTJE
2110 FLATHEAD CREEK RD W
WILLSALL, MT 59086 9538

Priority Date: JULY 10, 1892

Type of Historical Right: FILED

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:** 98.20

Source Name: FLATHEAD CREEK, NORTH FORK

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		NWNWNE	30	3N	7E	GALLATIN

Period of Diversion: MAY 15 TO SEPTEMBER 30

Diversion Means: HEADGATE

Period of Use: MAY 15 TO SEPTEMBER 30

***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	44.50		SE	30	3N	7E	GALLATIN
2	10.00		SESW	29	3N	7E	GALLATIN
3	40.00		S2SE	29	3N	7E	GALLATIN
4	3.70		N2NENW	32	3N	7E	GALLATIN
Total:	<u>98.20</u>						

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.

29027-00	29030-00	29034-00	29035-00	29037-00	29041-00
29042-00	29043-00	31300-00			

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
SHIELDS RIVER
BASIN 43A**

Water Right Number: 43A 191629-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: CHRISKE, GUY E REVOCABLE LIVING TRUST AGREEMENT
3402 FLATHEAD CREEK RD W
WILLSALL, MT 59086 9536

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: FLATHEAD CREEK, NORTH FORK

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.