

Montana Water Court
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43A-0497-R-2021

December 20, 2021

Montana Water Court

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

* * * * *

CLAIMANTS: Jerry G Martin; Regina M Martin

CASE 43A-0497-R-2021
43A 192199-00

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 received an issue remark denoting that a late objection was filed to the claim as well as other issue remarks from the DNRC during its claims reexamination.

The above-captioned claim was consolidated into Case 43A-0497-R-2021 to resolve the issue remarks.

FINDINGS OF FACT

1. On August 6, 2021, the Court set a filing deadline for claimants Jerry G. and Regina M. Martin or any other interested party to respond with their desire to pursue the late objection denoted by the issue remark appearing on claim 43A 192199-00. Nothing was filed by the ordered deadline.

2. Claim 43A 192199-00 also received a notice-type issue remark denoting modifications made by the DNRC during its claims reexamination. 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. 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.

5. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

6. Sanctions applied against a claimant may include modification of a claim to conform with data provided by the DNRC, information obtained by the Court, or information included in an objection, or the entry of default and termination of a water right claim. Rule 11, W.R.Adj.R.

CONCLUSIONS OF LAW

1. Based on the Claimants' failure to pursue the late objection, the late objection should be dismissed pursuant to Rule 22, W.R.Adj.R. The issue remark regarding the late objection should be removed from the claim and all elements should remain as they appeared in the Basin 43A Preliminary Decree.

2. The notice-type issue remark appearing on claim 43A 192199-00 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 dismiss the late objection pursuant to Rule 22, W.R.Adj.R..

A post decree abstract of the water right claim reflecting the removal of the issue remark is attached to this Report.

Eugene C. White
Water Master

Service via USPS Mail:

Jerry G Martin
Regina M Martin
54 Shields River Rd E
Livingston, MT 59047

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

Water Right Number: 43A 192199-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: REGINA M MARTIN
54 SHIELDS RIVER RD E
LIVINGSTON, MT 59047

Priority Date: OCTOBER 16, 1928

Type of Historical Right: USE

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: 3 - MODERATE

Maximum Acres: 10.00

Source Name: ADAIR CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWSW	10	1S	10E	PARK

Period of Diversion: MAY 1 TO SEPTEMBER 1

Diversion Means: HEADGATE

Period of Use: MAY 1 TO SEPTEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	10.00		SE	9	1S	10E	PARK

Total: 10.00