

Montana Water Court
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ELECTRONICALLY FILED

43A-0091-R-2020

July 19, 2021

Montana Water Court

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

* * * * *

CLAIMANT: Swandal Ranch Co.

OBJECTOR: 4 Diamond Ranch at Wallrock, LLC

CASE 43A-0091-2020

43A 20761-00 43A 20767-00

43A 20762-00 43A 20768-00

43A 20765-00 43A 20771-00

43A 20766-00

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. 4 Diamond Ranch at Wallrock, LLC (4 Diamond) objected to Swandal Ranch Co. (Swandal) claims 43A 20761-00, 43A 20762-00, 43A 20765-00, 43A 20766-00, 43A 20767-00, 43A 20768-00, and 43A 20771-00.
2. On June 15, 2021, the parties filed a Stipulation resolving the Objections and resolving any issue remarks appearing on the claims.
3. According to the Stipulation, Swandal withdraws claims 43A 20761-00, 43A 20762-00, 43A 20766-00, 43A 20767-00, 43A 20768-00, and 43A 20771-00.
4. Pursuant to the agreement of the parties, the following change should be made to claim 43A 20765-00:

Place of Use:						
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge County
1	14.00	16-00	NENE	28	4N	8E PARK
Total:	1.00	16-00	NESENE	28	4N	8E PARK

CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.
2. 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.

RECOMMENDATIONS

1. Claims 43A 20761-00, 43A 20762-00, 43A 20766-00, 43A 20767-00, 43A 20768-00, and 43A 20771-00 should be dismissed.
2. Claim 43A 20765-00 should be changed as shown in Finding of Fact No. 4.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm the terms of the claims in the DNRC's water rights database.

Anika M. Stern
Senior Water Master

Consented to Electronic Service:

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

Water Right Number: **43A 20761-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: **DISMISSED**

Owners: SWANDAL RANCH CO
 %SWANDAL LAW
 305 E LEWIS
 LIVINGSTON, MT 59047

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF RICE CREEK

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.

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

Water Right Number: **43A 20762-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: **DISMISSED**

Owners: SWANDAL RANCH CO
 %SWANDAL LAW
 305 E LEWIS
 LIVINGSTON, MT 59047

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF RICE CREEK

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.

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

Water Right Number: **43A 20765-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SWANDAL RANCH CO
 %SWANDAL LAW
 305 E LEWIS
 LIVINGSTON, MT 59047

Priority Date: DECEMBER 4, 1897

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 255.80 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: 15.00

Source Name: SPRING, UNNAMED TRIBUTARY OF RICE CREEK

Source Type: GROUNDWATER

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		NWNENE	28	4N	8E	PARK

***Period of Diversion:** MARCH 1 TO OCTOBER 15

Diversion Means: DIKE

***Period of Use:** MARCH 1 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	14.00		NENE	28	4N	8E	PARK
2	1.00		NESENE	28	4N	8E	PARK

Total: 15.00

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

Water Right Number: **43A 20766-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: **DISMISSED**

Owners: SWANDAL RANCH CO
 %SWANDAL LAW
 305 E LEWIS
 LIVINGSTON, MT 59047

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF RICE CREEK

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.

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

Water Right Number: **43A 20767-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: **DISMISSED**

Owners: SWANDAL RANCH CO
 %SWANDAL LAW
 305 E LEWIS
 LIVINGSTON, MT 59047

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: RICE CREEK

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.

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

Water Right Number: **43A 20768-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: **DISMISSED**

Owners: SWANDAL RANCH CO
 %SWANDAL LAW
 305 E LEWIS
 LIVINGSTON, MT 59047

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: RICE CREEK

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.

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

Water Right Number: **43A 20771-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: **DISMISSED**

Owners: SWANDAL RANCH CO
 %SWANDAL LAW
 305 E LEWIS
 LIVINGSTON, MT 59047

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: POTTER CREEK

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.