

Montana Water Court
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43A-0127-R-2020

July 29, 2021

Montana Water Court

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

* * * * *

CLAIMANTS: Jacqueline Marie Shiplet Surviving Spouse's Trust;
Robert Shiplet Marital Exemption Trust; Robert W.
Shiplet; Steven W. Shiplet

43A-0127-R-2020
43A 192328-00
43A 192436-00

OBJECTORS: Arthun Ranch Inc.; Queen Ranches Inc.; Jacqueline
Marie Surviving Spouse's Trust; Robert Shiplet
Marital Exemption Trust; David Palmer

NOTICE OF INTENT TO APPEAR: Shields Valley Land and
Cattle LLC; Arthun Ranch Inc.

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. If 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

The above-captioned claims appeared in the Preliminary Decree for Basin 43A. The claims each received Self-Objections from claimants Jacqueline Marie Surviving Spouse's Trust; Robert Shiplet Marital Exemption Trust, Objections from Arthun Ranch, Inc and Queen Ranches, a Notice of Intent to Appear from Shields Valley Land and Cattle, LLC, and Arthun Ranch, Inc., and issue remarks from the DNRC.

The claims were consolidated into Case 43A-0127-R-2020 to resolve the objections and issue remarks.

FINDINGS OF FACT

1. A Status Conference for Case 43A-0127-R-2020 took place on November 10, 2020 by telephone conference call. Water Master Eugene C. White presided; Coleen Coyle was present on behalf of Objectors Arthun Ranch, Inc. and Queen Ranches; Breanna Johnson was present on behalf of Claimants/Objectors Jacqueline Marie Shiplet Surviving Spouse's Trust, Robert Shiplet Marital Exemption Trust, Steven W. Shiplet, and Robert Shiplet; Abby Brown appeared on behalf of Shields Valley Land and Cattle LLC; and Les Arthun also appeared for the conference. After the conference, the Court set a filing deadline for the parties to file settlement documents resolving the objections, NOIA, and issue remarks.

2. That deadline was subsequently extended on three separate occasions.

3. On May 19, 2020, Claimants filed a *Notice of Filing of Withdrawal of Interest* stating that each of the claims should be terminated along with an attached *Request to Withdraw Statement of Claim*.

4. On May 25, 2021, Arthun Ranch Inc., and Queen Ranches, Inc. filed a *Withdrawal of Objections*, and Shields Valley Land and Cattle LLC filed a *Withdrawal of Notice of Intent to Appear*.

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 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.
9. 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 Claimants' *Notice of Withdrawal*, the claims should be dismissed pursuant to Rule 17(c), W.R.Adj.R.

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 claims reflecting the recommended changes is attached to this Report.

Eugene C. White
Water Master

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Service List updated: 7/20/21

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

Water Right Number: **43A 192328-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: **DISMISSED**

Owners:

ROBERT W SHIPLET
PO BOX 349
CLYDE PARK, MT 59018 0349

STEVEN W SHIPLET
PO BOX 51
CLYDE PARK, MT 59018

SHIPLET, JACQUELINE MARIE SURVIVING SPOUSE'S TRUST
%SHIPLET, JACQUELINE M TRUSTEE
PO BOX 103
CLYDE PARK, MT 59018 0103

SHIPLET, ROBERT MARITAL EXEMPTION TRUST
% SHIPLET, JACQUELINE M TRUSTEE
PO BOX 103
CLYDE PARK, MT 59018 0103

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: ROCK 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 192436-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: STEVEN W SHIPLET
 PO BOX 51
 CLYDE PARK, MT 59018

 SHIPLET, JACQUELINE MARIE SURVIVING SPOUSE'S TRUST
 %SHIPLET, JACQUELINE M TRUSTEE
 PO BOX 103
 CLYDE PARK, MT 59018 0103

 SHIPLET, ROBERT MARITAL EXEMPTION TRUST
 % SHIPLET, JACQUELINE M TRUSTEE
 PO BOX 103
 CLYDE PARK, MT 59018 0103

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: ROCK 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.