

July 7, 2021

Montana Water Court

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

\* \* \* \* \*

CLAIMANTS: Matthew B Levers; Levers Family Trust  
Amend 2006; Trust for Matthew B Levers

Case: 43A-0393-R-2021  
43A 125026-00  
43A 213210-00

**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. Claims 43A 125026-00 and 43A 213210-00 were decreed with the following DNRC issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 200 MINER'S INCHES DECREED IN CASE NO. 2717 , PARK COUNTY. 43A 7404-00, 43A 23729-00, 43A 122520-00, 43A 125026-00, 43A 213210-00.

Claim 43A 213210-00 was also decreed with a remark indicating that it was not included in the Temporary Preliminary Decree.

2. No objections were filed.

3. Claims 43A 125026-00 and 43A 213210-00, along with the other claims listed in the decree exceeded issue remark, all claim the Dunlewy Sheep & Land Co. June 1, 1890 right from Daisy Dean Creek for 200.00 miner's inches (5.00 cfs). The issue remark indicates that the claim overclaimed the Dunlewy Sheep & Land Co. June 1, 1890 right; however, upon this Master's analysis, the right is *not* overclaimed:

- 6/1/1890: 200 MI (5.00 CFS)
  - 43A 213210-00: stock
  - 43A 23729-00: 1.88 cfs (843.74 gpm)
  - 43A 122520-00: 2.03 cfs (911.06 gpm)
  - 43A 7404-00: 98.74 gpm
  - 43A 125026-00: 395.00 gpm
    - TOTAL: **5.01 CFS**

### 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. 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.

2. The Water Court must address all issue remarks that appear on a claim. Section 85-2-248, MCA.

### CONCLUSION OF LAW

1. The decree exceeded issue remark appearing on the claims in this Case

appears to have been added to the claims in error.

2. The second issue remarks appearing on 213210-00 is a notice-type issue remark. As no objections were filed, no further proceedings are required.

#### RECOMMENDATION

1. The issue remarks should be removed from claims 43A 125026-00 and 43A 213210-00 with no changes to the elements of the claims.

Post Decree Abstracts of Water Right Claim are served with the Report to confirm the terms of the claims in the state's centralized record system.

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Anika M. Stern  
Senior Water Master

#### **Service Via Electronic Mail:**

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

**Water Right Number:** 43A 125026-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** MATTHEW B LEVERS  
138 DAISY DEAN RD  
WILLSALL, MT 59086 9402

**Priority Date:** JUNE 1, 1890

**Type of Historical Right:** DECREEED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 395.00 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:** 25.00

**Source Name:** DAISY DEAN 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		SWNWSW	10	3N	9E	PARK

**\*Period of Diversion:** APRIL 1 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** SMEHAUG-ZIMMERMAN DITCH

**\*Period of Use:** APRIL 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	25.00		S2	9	3N	9E	PARK
<b>Total:</b>	25.00						

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

**Water Right Number:**      **43A 213210-00**      STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:** ACTIVE

**Owners:**                      LEVERS FAMILY TRUST, AMEND 2006  
                                      %MATHEW LEVERS  
                                      138 DAISY DEAN RD  
                                      WILLSALL, MT 59086 9402  
  
                                      TRUST FOR MATTHEW B LEVERS  
                                      % MATTHEW LEVERS, TRUSTEE  
                                      138 DAISY DEAN RD  
                                      WILLSALL, MT 59086 9402

**Priority Date:**              JUNE 1, 1890

**Type of Historical Right:**      DECREED

**Purpose (Use):**                STOCK

**Flow Rate:**                A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE  
                                      CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A  
                                      DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT  
                                      HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:**                    THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR  
                                      STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER  
                                      ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING  
                                      CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER  
                                      SOURCE.

**Source Name:**              DAISY DEAN 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		S2	9	3N	9E	PARK

**Period of Diversion:**      JANUARY 1 TO DECEMBER 31

**Diversion Means:**        LIVESTOCK DIRECT FROM SOURCE

**Period of Use:**              JANUARY 1 TO DECEMBER 31

**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			S2	9	3N	9E	PARK