

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.

Anika M. Stern
Senior Water Master

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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
WILSALL, MT 59086 9402

Priority Date: JUNE 1, 1890

Type of Historical Right: DECREED

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		SWNW SW	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
Total:	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
WILSALL, MT 59086 9402

TRUST FOR MATTHEW B LEVERS
% MATTHEW LEVERS, TRUSTEE
138 DAISY DEAN RD
WILSALL, 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</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</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			S2	9	3N	9E	PARK