

Montana Water Court
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43A-0152-R-2020

September 16, 2021

Montana Water Court

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

* * * * *

CLAIMANTS: Shane Baukol; Shannon Baukol; Alan Peterson;
Bruce A. Rinnert; Nancy L. Rinnert; Clyde Park
Meadows LLC.; Alice L. Coppin; John McInerney;
Russell Saari; Teresa Saari

CASE 43A-0152-R-2020

43A 29091-00
43A 212635-00
43A 212701-00

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

All water right claims that appeared in the Preliminary Decree for this Basin were subject to issue remarks resulting from pre-decree examination by the DNRC, objections, and counterobjections. The above-captioned claims did not receive objections, counterobjections, or notices of intent to appear, but did receive issue remarks from the DNRC.

FINDINGS OF FACT

1. A Status Conference was held on September 23, 2020 for Case 43A-0152-R-2020. Water Master Eugene C. White presided; Steve Woodriff was present on behalf of Claimants Shane and Shannon Baukol; Claimant Nancy L. Rinnert was present on behalf of she and Bruce A. Rinnert. Claimants Alan Peterson; Clyde Park Meadows LLC.; Alice L. Coppin; and John McInerney failed to appear for the conference.

During the conference, the Court discussed potential resolutions to the decree exceeded situation, including the addition of a multiple use information remark to the claims.

2. Each claim received an issue remark from the DNRC stating:

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 150 MINER'S INCHES DECREED IN CASE NO. 2717, PARK COUNTY. 43A 29091-00, 43A 212635-00, 43A 212701-00.

3. Claims 43A 212635-00 and 43A 8504-00 each received notice-type issue remarks.

4. On September 30, 2020, the Baukol's filed a *Notice of Filing Letter of Counsel*. The *Letter* states that the Baukols filed an ownership update for claim 43A 212701-00 after speaking with Alice Coppin and John McInerney who affirmed they have no interest in the claim. Additionally, the *Letter* states that counsel for Ms. Rinnert stated that the Rinnerts agreed with the addition of the multiple use remark on the claims to resolve the decree exceeded issue remarks. Finally, the *Letter* asserts that Claimant Clyde Park Meadows, LLC no longer exists and asks for a default entered against Clyde Park removing them from the Case for failure to participate.

5. On March 5, 2021, the Court set a deadline for the remaining claimants to show cause why the multiple use remark should not be added to the claims. Nothing was filed by the ordered deadline.

6. On March 18, 2021, Claimants Shane and Shannon Baukol filed a *Status Report* reiterating their agreeance with the addition of the multiple use remark on the claims, attaching a Water Ownership Update Form for claim 43A 212701, and renewing their request for a default and removal of Clyde Park Meadows, LLC as claimant in the case.

7. On April 28, 2021, the Court set a deadline for Claimant Clyde Park Meadows, LLC to show cause why they should not be removed as claimant pursuant to Rule 22, W.R.Adj.R.. Nothing was filed by the ordered deadline.

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. *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. If *prima facie* status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. The Water Court is not bound by parties' settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

11. 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.

CONCLUSIONS OF LAW

1. Based on the parties stated agreement to the addition of a multiple use remark to the claims and the remaining Claimants failure to response showing cause why the remark should not be added, a multiple use information remark should be added to the claims as described in Finding of Fact No. 4. The decree exceeded issue remarks are resolved and the remarks should be removed from claims.

2. Because Claimant Clyde Park Meadows, LLC did not file any information showing cause why they should not be removed as Claimants, Clyde Park Meadows, LLC should be removed from the Case pursuant to Rule 22, W.R.Adj.R.

3. The remaining issue remarks appearing on the claims in this Case are notice-type issue remarks. The notice-type remarks served their notice purpose and should be removed from the claims.

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

Service via USPS Mail:

Huppert, Swindlehurst & Woodruff, P.C.
Steve Woodruff
PO Box 523
Livingston, MT 59047

Clyde Park Meadows LLC
193 Chicken Creek Rd.
Livingston, MT 59047-9314

Alice L. Coppin
John J. McInerney
4200 Lower River Rd.
Great Falls, MT 59405-8200

Alan Peterson
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Clyde Park, MT 59018-0432

Bruce A. Rinnert
Nancy L. Rinnert
PO Box 7
Mc Leod, MT 59052

**Russell Saari
Teresa Saari,
197 3rd Ave S.
Clyde Park, MT 59018**

Note: Service List and Caption Updated: 9.16.21

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

Water Right Number: **43A 29091-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
SHANE BAUKOL
PO BOX 236
CLYDE PARK, MT 59018

SHANNON BAUKOL
PO BOX 236
CLYDE PARK, MT 59018

ALAN PETERSON
PO BOX 342
CLYDE PARK, MT 59018 0432

NANCY L RINNERT
PO BOX 7
MC LEOD, MT 59052

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT
MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE
OWNERS.

Priority Date: MAY 15, 1902

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.75 CFS

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: 35.00

Source Name: COTTONWOOD 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		SESESE	28	2N	9E	PARK

Period of Diversion: MAY 1 TO AUGUST 15

Diversion Means: HEADGATE

Ditch Name: HIUM DITCH

Period of Use: MAY 1 TO AUGUST 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>
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1	30.00	N2NE	33	2N	9E	PARK
2	5.00	NWSENW	33	2N	9E	PARK
Total:	35.00					

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

212635-00 212701-00 29091-00

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

Water Right Number: **43A 212635-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: CLYDE PARK MEADOWS LLC
193 CHICKEN CREEK RD
LIVINGSTON, MT 59047 9314

Priority Date: MAY 15, 1902

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 10/06/1988 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

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: COTTONWOOD 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		NENNSW	27	2N	9E	PARK

Period of Diversion: SEPTEMBER 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: WOLFE-HIUM DITCH

Period of Use: SEPTEMBER 1 TO OCTOBER 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			N2SE	33	2N	9E	PARK

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

212635-00 212701-00 29091-00

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

Water Right Number: **43A 212701-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
SHANE BAUKOL
PO BOX 236
CLYDE PARK, MT 59018

SHANNON BAUKOL
PO BOX 236
CLYDE PARK, MT 59018

Priority Date: MAY 15, 1902

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: COTTONWOOD 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		N2N2N2	33	2N	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			N2N2N2	33	2N	9E	PARK

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

CLAIM FILED 10/13/1988 . THIS IS AN EXEMPT RIGHT VOLUNTARILY FILED UNDER SECTION 85-2-222, MCA.