

Montana Water Court
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43A-0158-R-2020

September 21, 2021

Montana Water Court

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

* * * * *

CLAIMANTS: Boyd’s Cottonwood Ranch, Inc.; Bob Boyd Trucking
Inc.; James R Boyd; Robert B Boyd

CASE 43A-0158-R-2020
43A 8499-00
43A 8500-00
43A 8504-00

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

The claims in this case were called in on motion by the Water Court in an Order issued December 30, 2019, to address a possible decree exceeded situation. The claims were consolidated into Case 43A-0158-R-2020 to resolve the potential decree exceeded issue as well as issue remarks placed on the claims by the DNRC.

FINDINGS OF FACT

1. A Status Conference was held on October 13, 2020 for Case 43A-0158-R-2020. Water Master Eugene C. White presided. Claimant James R. Boyd was present on behalf of himself and Boyd's Cottonwood Ranch, Inc., Robert B. Boyd was present on behalf of himself, Bob Boyd Trucking, Inc., and Boyd's Cottonwood Ranch, Inc., collectively ("the Boyds"), Christopher T. Scoones was present on behalf of all claimants.

During the conference, the Court discussed potential resolutions to the decree exceeded situation, including the addition of a multiple use information remark to claim 43A 8500-00. The parties also discussed the substantive issue remarks appearing on the claims.

2. Claim 43A 8499-00 is an irrigation claim. Claim 43A 8499-00 received an issue remark from the DNRC stating:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE
POINT OF DIVERSION APPEARS TO BE IN THE NENWNW SEC 23
TWP 2N RGE 9E PARK COUNTY.

Claim 43A 8500-00 is an irrigation claim. Claim 43A 8500-00 received an issue remarks from the DNRC stating:

THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE
PRIORITY DATE ON THE SUBMITTED DECREE IS AUGUST 5,
1893.

3. Claims 43A 8500-00 and 43A 8504-00 each received notice-type issue remarks noting modifications made by the DNRC during its claims reexamination. No objections were filed.

4. On October 30, 2020, the Boyds filed a *Notice of Filing of Motions to Amend*. The *Motions to Amend* included the following proposed modifications:

43A 8499-00

Ditch Name: Egeler-Shurrer-Queen Ditch

43A 8500-00

Type of Historical Right: USE

Point of Diversion: SWNWNW, Section 23, Township 2N, Range 9E, Park County

Ditch Name: Egeler-Shurrer-Queen Ditch

43A 8504-00

Point of Diversion: SWNWNW, Section 23, Township 2N, Range 9E, Park County

Ditch Name: Egeler-Shurrer-Queen Ditch

5. On January 26, 2021, Lund Law PLLC filed a *Motion to Withdraw as Counsel* for the Boyds.

6. In an Order on March 18, 2021, Claimants were given the opportunity to submit information or evidence further resolving the above-listed issue remarks and asked to reiterate their agreement to adding a multiple use remark to claim 43A 8500-00.

7. On March 31, 2021, the Boyds filed a letter with the Court reiterating their agreeance with the addition of the multiple use remark proposed during the status conference on October 13, 2020.

8. On May 13, 2021, the Court set a filing deadline for the Boyds to clarify the point of diversion for claim 43A 8499-00.

9. The Boyds filed a *Response* on May 26, 2021 and attached an ariel map showing the point of diversion for claim 43A 8499-00 to be in the NENWNW SEC 23, TWP 2N, RGE 9E, PARK COUNTY, matching the suggested modification from the issue remark appearing on claim 43A 8499-00.

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.

CONCLUSIONS OF LAW

1. Based on the information and evidence presented in the Boyds' *Motions to Amend* as well as their reiteration of the acceptance of the multiple use remark to each of the claims and attachments thereto, the decree exceeded situation appears to be resolved. Additionally, claims should be modified as described in Finding of Fact No. 4 and the remarks should be removed from claims.

2. Based on the information produced in the Boyds' May 26, 2021, *Response*, the point of diversion for claim 43A 8499-00 should be modified as described in Finding of Fact No. 9.

3. Because the Claimants did not file any information or evidence that the historical priority date appearing on the Statement of Claim for claim 43A 8500-00 was incorrect. The issue remark does not overcome the Prima Facie status of the statement of claim and the remark should be removed.

4. The remaining issue remarks appearing on the claims in this Case are notice-type issue remarks, no further proceedings are required, and the remarks should be removed.

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:

Boyd's Cottonwood Ranch, Inc.
PO Box 77
Clyde Park, MT 59018-0077

Bob Boyd Trucking Inc.
PO Box 1257
Livingston, MT 59047-1257

James R. Boyd
PO Box 291
Clyde Park, MT 59018

Robert B. Boyd
PO Box 77
Clyde Park, MT 59018-0077

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

Water Right Number: 43A 8499-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JAMES R BOYD
PO BOX 291
CLYDE PARK, MT 59018

ROBERT B BOYD
PO BOX 77
CLYDE PARK, MT 59018 0077

BOYD, BOB TRUCKING INC
PO BOX 1257
LIVINGSTON, MT 59047 1257

BOYD'S COTTONWOOD RANCH INC
PO BOX 77
CLYDE PARK, MT 59018 0077

Priority Date: AUGUST 5, 1883

Type of Historical Right: DECREEED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 10.50 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:** 420.00

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		NENWNW	23	2N	9E	PARK

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: EGELER-SHURRER-QUEEN 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	158.00		SW	34	2N	9E	PARK
2	150.00		SE	34	2N	9E	PARK
3	32.00		SWNW	34	2N	9E	PARK

4	40.00	SENW	34	2N	9E	PARK
5	40.00	SWNE	34	2N	9E	PARK
Total:	<u>420.00</u>					

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

8499-00 8500-00

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.

8499-00 8500-00 8504-00

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

Water Right Number: 43A 8500-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JAMES R BOYD
PO BOX 291
CLYDE PARK, MT 59018

ROBERT B BOYD
PO BOX 77
CLYDE PARK, MT 59018 0077

BOYD, BOB TRUCKING INC
PO BOX 1257
LIVINGSTON, MT 59047 1257

BOYD'S COTTONWOOD RANCH INC
PO BOX 77
CLYDE PARK, MT 59018 0077

Priority Date: JUNE 12, 1904

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 10.50 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:** 420.00

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		SWNWNW	23	2N	9E	PARK

Period of Diversion: APRIL 1 TO JULY 15

Diversion Means: HEADGATE

Ditch Name: EGELER-SHURRER-QUEEN DITCH

Period of Use: APRIL 1 TO JULY 15

THIS RIGHT IS LIMITED TO HIGH OR FLOOD WATERS OF COTTONWOOD CREEK.

***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	158.00		SW	34	2N	9E	PARK
2	150.00		SE	34	2N	9E	PARK

3	32.00	SWNW	34	2N	9E	PARK
4	40.00	SENW	34	2N	9E	PARK
5	40.00	SWNE	34	2N	9E	PARK
Total:	<u>420.00</u>					

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

8499-00 8500-00

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.

8499-00 8500-00 8504-00

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

Water Right Number: 43A 8504-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JAMES R BOYD
PO BOX 291
CLYDE PARK, MT 59018

ROBERT B BOYD
PO BOX 77
CLYDE PARK, MT 59018 0077

BOYD, BOB TRUCKING INC
PO BOX 1257
LIVINGSTON, MT 59047 1257

BOYD'S COTTONWOOD RANCH INC
PO BOX 77
CLYDE PARK, MT 59018 0077

Priority Date: AUGUST 5, 1883

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		SWNWNW	23	2N	9E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: EGELER-SHURRER-QUEEN DITCH

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				34	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.

8499-00

8500-00

8504-00