

Montana Water Court
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43A-0197-R-2020

September 20, 2021

Montana Water Court

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

CLAIMANTS: Dominick D. Spencer; Muddy Creek Family Ranch LLC
NOTICE OF INTENT TO APPEAR: Red Dog Ranch LLC
ON MOTION OF THE WATER COURT

43A-0197-R-2020
43A 19224-00
43A 19225-00

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 above-captioned claims appeared in the Preliminary Decree for Basin 43A. The claims did not receive objections or counterobjections but did receive a notice of intent to appear and issue remarks during the DNRC's claims reexamination.

The claims were consolidated into Case 43A-0281-R-2021 to resolve the NOIA and issue remarks.

FINDINGS OF FACT

1. Claim 43A 19224-00 was called in on motion by the Water Court in an Order filed December 30, 2019, to address a possible omission of an issue remark by the DNRC denoting that no documentation was submitted to support the type of historical right and priority date.

2. Claim 43A 19225-00 received the following issue remark:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 21.00 GPM PER ACRE.

3. A Status Conference for Case 43A-0197-R-2020 took place on November 10, 2020 by telephone conference call. Water Master Eugene C. White presided; Benjamin Suddath appeared on behalf of NOIA party Red Dog Ranch LLC; Claimants Dominick D. Spencer and Muddy Creek Family Ranch LLC did not appear at the conference.

4. After the conference, the Court set a filing deadline requiring the Claimants to work with the DNRC under §85-2-248(5), MCA.

5. On February 19, 2021, DNRC Water Resources Specialist Mary Crable filed her *Memorandum* in this matter. Ms. Crable's *Memo* states that she spoke with both claimants about the issues involved in the case. In her *Memo*, Ms. Crable states that Claimant Spencer Dominick submitted a picture copy of Decree 2717 which contains information confirming the priority date for claim 43A 19224-00 as July 16, 1891, as it is based on the 50 miners inches decreed to William J. Kaiser. According to Ms. Crable, the DNRC took the copy of the Decree submitted to the District Court in Livingston, Montana where the picture was authenticated. Ms. Crable goes on to state that with this

authentication, the DNRC considers this issue resolved. Additionally, the *Memo* states that the Claimants both attest that they have historically and continue to use the entirety of the 21.00gpm per acre of the flow rate listed on the Statement of Claim for claim.

6. On April 19, 2021, the Court set a filing deadline for NOIA party Red Dog Ranch, LLC to review the *Memo* filed by Ms. Crable and file a statement pertaining to the position of the NOIA. That deadline was subsequently extended at the request of Red Dog Ranch, LLC in an Order on May 24, 2021.

7. On June 1, 2021, Red Dog Ranch, LLC filed a *Conditional Withdrawal* of its NOIA stating that, “[u]pon the Court’s application of the proposed recommendations in the DNRC Memo to each of the captioned claims, Red Dog’s NOIA will be resolved.”

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. 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.

CONCLUSIONS OF LAW

1. The evidence in the record is sufficient to resolve the issue remarks placed on the above-captioned claims.

2. The information and subsequent recommendation provided in Ms. Crable's *Memo* resolves the on-motion status appearing on claim 43A 19224-00. The priority date should remain July 16, 1891, as it appears on the Statement of Claim.

3. The information in the statements made the Claimants denoted in Ms. Crable's *Memo* regarding the historical flow rate for claim 43A 19225-00 is sufficient such that the issue remark does not overcome the prima facie status of the of the flow rate element as it appears on the Statement of Claim. The issue remark should be removed.

4. The above-listed recommendations, in accordance with the recommendations contained in Ms. Crable's *Memo*, resolve Red Dog Ranch, LLC's NOIA as stated in Red Dog's *Conditional Withdrawal*.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

Eugene C. White
Water Master

Service by USPS Mail:

Dominick D. Spencer
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Wilsall, MT 59086-2902

Muddy Creek Family Ranch LLC
101 Muddy Creek Rd
Wilsall, MT 59086

Service Via Electronic Mail:

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

Water Right Number: 43A 19224-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: SPENCER D DOMINICK
205 MUDDY CREEK RD
WILLSALL, MT 59086 2902

MUDDY CREEK FAMILY RANCH LLC
101 MUDDY CREEK RD
WILLSALL, MT 59086

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

Priority Date: JULY 16, 1891

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 1.25 CFS

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: 47.90

Source Name: MUDDY 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		NWNENE	15	3N	8E	PARK

Period of Diversion: APRIL 1 TO NOVEMBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO NOVEMBER 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	16.60		NENW	14	3N	8E	PARK
2	28.30		NWNW	14	3N	8E	PARK
3	3.00		NENENE	15	3N	8E	PARK
Total:	47.90						

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.

19224-00

19225-00

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

Water Right Number: 43A 19225-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: SPENCER D DOMINICK
205 MUDDY CREEK RD
WILLSALL, MT 59086 2902

MUDDY CREEK FAMILY RANCH LLC
101 MUDDY CREEK RD
WILLSALL, MT 59086

TRANSFER PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT WILL BE SPLIT INTO SEPARATE OWNERSHIPS AFTER FINAL DECREE.

Priority Date: JUNE 20, 1906

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 2.25 CFS

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: 47.90

Source Name: MUDDY 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		NWNENE	15	3N	8E	PARK

Period of Diversion: APRIL 1 TO NOVEMBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO NOVEMBER 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	16.60		N2NENW	14	3N	8E	PARK
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Total:	47.90						

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19224-00

19225-00