

Montana Water Court
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43A-0223-R-2021

September 16, 2021

Montana Water Court

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

* * * * *

CLAIMANT: Johnstone Ranch, LLC

CASE 43A-0223-R-2021

43A 191654-00

43A 213373-00

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 notices of intent to appear but did receive issue remarks during the DNRC's claims reexamination.

The claims were consolidated into Case 43A-0223-R-2021 to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 43A 191654-00 is an irrigation claim. The claim received an issue remark stating that:

THE POINT OF DIVERSION APPEAR TO BE IN GOVT LOT NO. 3 SENENW SEC 5
TWP 2N RGE 9E PARK COUNTY.

2. Claim 43A 213373-00 is an irrigation claim. Claim 43A 213373-00 received an issue remark stating that:

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE
REFINED FROM INFORMATION IN THE CLAIM FILE.

3. On April 1, 2021, the Court set a filing deadline requiring the Claimants to work with the DNRC under §85-2-248(5), MCA, to resolve the issue remarks.

4. On May 6, 2021, DNRC Water Resources Specialist Mary Crable filed her *Memorandum* in this matter. Ms. Crable's *Memo* states that she received maps from the Claimant, Mr. Johnstone, clarifying the point of diversion for each claim. In her *Memo*, Ms. Crable states that the point of diversion for claim 43A 191654-00 is located in the NWSWNE of Section 5, Township 2N, Range 9E, Park County and that the point of diversion for claim 43A 213373-00 is located in the SENWSE of Section 5, Township 2N, Range 9E, Park County. According to Ms. Crable, these modifications would resolve the issue remarks appearing on the claims and the DNRC recommends removal of the remarks.

5. Claim 43A 213373-00 also received notice-type issue remarks from the DNRC during its claims reexamination. No objections were filed.

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 recommendations provided in Ms. Crable’s *Memo* resolves the point of diversion issue remarks appearing on claim 43A 191654-00 and 43A 213373-00. The modifications should be made as described in Finding of Fact No. 4 and the issue remarks should be removed.

3. The notice type issue remarks appearing on each claim 43A 213373-00 served their notice purpose and should be removed from the claim.

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 via USPS Mail:

Johnstone Ranch, LLC
50 Indian Creek Rd.
Wilsall, MT 59086-9562

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

Water Right Number: 43A 191654-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JOHNSTONE RANCH LLC
50 INDIAN CREEK RD
WILSALL, MT 59086 9562

***Priority Date:** JULY 2, 1901

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

***Flow Rate:** 3.38 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: 58.00

Source Name: SHIELDS RIVER

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		NWSWNE	5	2N	9E	PARK

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

Diversion Means: PUMP

***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	58.00		E2	5	2N	9E	PARK

Total: 58.00

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

Water Right Number: **43A 213373-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: JOHNSTONE RANCH LLC
50 INDIAN CREEK RD
WILSALL, MT 59086 9562

Priority Date: SEPTEMBER 15, 1903

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 03/20/89 . 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): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.20 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: 45.00

Source Name: SHIELDS RIVER

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		SENWSE	5	2N	9E	PARK

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: CLYDE PARK CANAL CO 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	45.00		W2SE	5	2N	9E	PARK

Total: 45.00