

Montana Water Court
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ELECTRONICALLY FILED

43A-0243-R-2021

September 9, 2021

Montana Water Court

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

CLAIMANTS: Alfred F Sasse; Eva M Sasse; Sasser Living
Trust Dated May 3, 1999

OBJECTORS: Garth Sasser; Nancy Sasse Sasser

CASE: 43A-0243-R-2021
43A 18874-00

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 claim appeared in the Preliminary Decree for Basin 43A. Claim 43A 18874-00 received an objection from Garth Sasser and Nancy Sasse Sasser. The claim was consolidated into Case 43A-0243-R-2021 to resolve the objection.

FINDINGS OF FACT

1. A Status Conference for Case 43A-0243-R-2021 took place on April 7, 2021, by telephone conference call. Water Master Eugene C. White presided; Objectors Garth Sasser and Nancy Sasse Sasser were present on behalf of themselves and Claimant Sasser Living Trust May 3, 1999.

2. During the conference, Mr. Sasser described the Sasser's objection including the need to clarify the name of the trust, removal of deceased claimants Alfred and Eva Sasser from the water right, and the need to modify the place of use ID 4 element of the claim.

3. On April 9, 2021, the Court set a filing deadline for the Sassers to file information or evidence and a map pertaining to the resolution of the objection and noting that the Court could make the clerical updates to the trust named as claimant, but that removal of former claimant required an ownership update through the DNRC. That deadline was extended in an Order on May 18, 2021.

4. On May 24, 2021, the Sassers filed a *Response*. In the *Response*, the Sassers state that the place of use for claim 43A 18874-00 should be modified from N2SE Sec 4, Twp 2N, Rge 10E, Park County, to N2NWSE Sec 4, Twp 2N, Rge 10E, Park County. The Sassers' *Response* includes a map showing the portion of property they own in Sec 4, Twp 2N, Rge 10E, Park County.

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. 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.

6. 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 remains. Rule 17(c), W.R.Adj.R.

CONCLUSIONS OF LAW

1. The trust name and address should be updated to reflect current ownership as described in Finding of Fact No. 3, however, all claimants appearing on the abstract will appear until an ownership update is filed with the DNRC.

2. The requested modification of the place of use for ID 4 of claim 43A 18874-00 constitutes a reduction in the elements of the claim such that the Court may accept the requested reduction or limitation “without further presentation of evidence.” Rule 17(c), W.R.Adj.R. The objection for claim 43A 18874-00 is resolved.

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 claim reflecting the recommended changes is attached to this Report.

Eugene C. White
Water Master

Service via USPS Mail:

Alfred F Sasse (Deceased)
Eva M Sasse (Deceased)
Sasser Living Trust Dated May 3, 1999
1052 Cayuse Dr.
Moscow, ID 83843-2461

Sasser Living Trust Dated May 3, 1999
Garth and Nancy L. Sasser, Trustees
Garth Sasser and Nancy Sasse Sasser
1052 Cayuse Dr
Moscow, ID 83843-2461

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

Water Right Number: 43A 18874-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ALFRED F SASSE
SASSER LIVING TRUST DATED MAY 3, 1999
1052 CAYUSE DR.
MOSCOW, ID 83843 2461

EVA M SASSE
SASSER LIVING TRUST DATED MAY 3, 1999
1052 CAYUSE DR.
MOSCOW, ID 83843 2461

SASSER LIVING TRUST DATED MAY 3, 1999
GARTH & NANCY L. SASSER, TRUSTEES
1052 CAYUSE DR
MOSCOW, ID 83843 2461

OWNER SASSER RETAINED. CONTRACT FOR DEED INTEREST.

Priority Date: JULY 9, 1898

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		NESWNE	24	3N	10E	PARK

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: SASSE-C. MILLER-SVENSRUD 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			N2	4	2N	10E	PARK
2			NWSW	4	2N	10E	PARK

3	NENESW	4	2N	10E	PARK
4	N2NWSE	4	2N	10E	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.

18874-00 18876-00