

Montana Water Court  
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43A-0247-R-2021

September 20, 2021

Montana Water Court

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

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CLAIMANT: Stutterheim Ranch Inc.,

OBJECTOR: Stutterheim Ranch Inc.,

**CASE 43A-0247-R-2021**

43A 23753-00

43A 23762-00

**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 received a self-objection from Stutterheim Ranch, Inc. and issue remarks during the DNRC's claims reexamination.

The claims were consolidated into Case 43A-0247-R-2021 on March 17, 2021, to resolve the issue remarks.

### FINDINGS OF FACT

1. Claim 43A 23762-00 received an issue remark stating that a late-objection was filed to the ownership, priority date, place of use, acres irrigated, flow rate, and point of diversion. Claim 43A 23762-00 also received an issue remark stating that:

THE WATER COURT HAS BEEN PRESENTED WITH EVIDENCE INDICATING THE PLACE OF USE MAY BE INCORRECT. THE PLACE OF USE MAY BE IDENTICAL TO THE POINT OF DIVERSION BASED UPON AN AFFIDAVIT FILED BY THE CLAIMANT 4/25/96 LOCATED IN THE CLAIM FILE. LATE OBJECTIONS HAVE BEEN FILED TO THE OWNERSHIP, PRIORITY DATE, VOLUME, PLACE OF USE, ACRES IRRIGATED, FLOW RATE, AND POINT OF DIVERSION OF THIS WATER RIGHT CLAIM. THEY WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

When Case 43A-0247-R-2021 was consolidated, the Claimant was given the opportunity to respond with whether they would like to pursue the late objections. Nothing was filed by the ordered deadline.

2. Claim 43A 23753-00 is an irrigation claim. The claim received the following issue remarks from the DNRC:

THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED DECREE IS OCTOBER 8, 1889.

THIS CLAIM WAS TERMINATED PRIOR TO THE ISSUANCE OF THE TEMPORARY PRELIMINARY DECREE FOR THE SHIELDS RIVER BASIN (43A) ON 08/03/1988. AS A RESULT, THE ONLY ELEMENT DECREED FOR THIS CLAIM WAS THE OWNERSHIP. THIS CLAIM HAS BEEN REINSTATED. SEE CASE 43A-116.

3. On May 17, 2021, the Court set another deadline for claimant to file information or evidence disputing the proposed modification to the place of use for claim 43A 23762-00 or clarifying any element it did not believe was accurate on the Statement of Claim for claim 43A 23753-00. Again, 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; 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.
8. 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. The issue remarks regarding the place of use for claims 43A 23762-00 overcomes the prima facie status of the Statements of Claim. The information contained

in the claim file coupled with the fact that the Claimants did not provide information or evidence disputing the correction to the place of use shows by a preponderance of the evidence that the place of use should be corrected as described in Finding of Fact No. 1. This correction resolves the issue remark, and the issue remark should be removed from the claim.

2. The issue remarks regarding the historically accurate priority date for claim 43A 23753-00 does not overcome the prima facie status of the Statements of Claim. Because the Claimants did not provide information or evidence disputing the priority date, or any other element of the claim, the elements should remain as they appear on the Statement of Claim. The issue remarks should be removed from the claim.

3. Because no response was filed indicating a desire to pursue the late objection for claim 43A 23762-00, the objection should be removed pursuant to Rule 22, W.R.Adj.R.

#### 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.

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Eugene C. White  
Water Master

**Service via USPS Mail:**

Stutterheim Ranch Inc.,  
129 Laubscher Bodine Rd  
Wilsall, MT 59086-9548  
406-686-4494 H  
406-686-4411 H  
Dpstutterheim@Ycsi.Net

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

**Water Right Number:** 43A 23753-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** STUTTERHEIM RANCH INC  
129 LAUBSCHER BODINE RD  
WILLSALL, MT 59086 9548

**Priority Date:** JUNE 12, 1904

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 8.50 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 2 - MODERATELY HIGH

**Maximum Acres:** 381.00

**\*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		SWSENE	13	3N	10E	PARK

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

**Diversion Means:** HEADGATE

**Ditch Name:** UPPER COTTONWOOD DITCH

**\*Period of Use:** APRIL 1 TO OCTOBER 15

THIS RIGHT IS LIMITED TO HIGH OR FLOOD WATERS OF COTTONWOOD CREEK BASED UPON CAUSE NO.12589.

**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	320.00		S2	11	2N	9E	PARK
2	61.00		S2N2	11	2N	9E	PARK
<b>Total:</b>	<b>381.00</b>						

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

**Water Right Number:** 43A 23762-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** STUTTERHEIM RANCH INC  
129 LAUBSCHER BODINE RD  
WILLSALL, MT 59086 9548

**Priority Date:** OCTOBER 24, 1903

**Type of Historical Right:** FILED

**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:** SPRING  
**Source Type:** GROUNDWATER

**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	2	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			NWNENE	2	2N	9E	PARK