

Montana Water Court
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43A-0264-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

* * * * *

CLAIMANT: RMW Ranch Trust

CASE: 43A-0264-R-2021

43A 26073-00

43A 26075-00

43A 26076-00

43A 190671-00

43A 190672-00

43A 190673-00

OBJECTOR: RMW Ranch Trust

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.

Each of the claims received an issue remark stating that a previously filed objection was amended by the Claimants. Claim 43A 190672-00 also received substantive issue remarks from the DNRC. The claims were consolidated into Case 43A-0264-R-2021 to resolve the issue remarks.

FINDINGS OF FACT

1. A Status Conference for Case 43A-0264-R-2021 took place on May 5, 2021, by telephone conference call. Water Master Eugene C. White presided; Joe Swindlehurst and Ben Davis were present on behalf of Claimant/Objector RMW Ranch Trust (“RMW”).

During the conference, Mr. Swindlehurst and Mr. Davis described the objection from RMW including the fact that modifying the means of diversion for claim 43A 190672-00 to a dam would resolve both the objection as well as the means of diversion issue remark. Additionally, the Court addressed the issue remark pertaining to reservoir record data for claim 43A 190672-00.

2. After the conference, the Court set a filing deadline for claimant/objector RMW to file reservoir record information pertaining to the resolution of the reservoir record issue remark appearing on claim 43A 190672-00 in an Order on May 6, 2021.

3. On May 19, 2021, RMW filed a *Notice of Filing Reservoir Record Information*. The *Notice* attaches a letter from Josh Hill of Downstream Research, LLC stating that he conducted a site visit on May 13, 2021, in order to obtain the required reservoir information. Mr. Hill states in his letter that he used a combination of measurements, GPS locations, and pictures coupled with GIS software to provide the following values for the reservoir record of claim 43A 190672-00:

Dam height: 11 feet

Maximum depth: 8 feet

Surface area: 1.55 acres

Capacity: 4.95 acre-feet

4. Each of the claims received a notice-type issue remark denoting that a previous objection was amended to source. No objections were filed regarding the source for any of the aforementioned claims.

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 contained in RMW’s *Notice of Filing*, is sufficient to resolve the issue remarks for claim 43A 190672-00. The evidence shows by a preponderance that the reservoir record should be corrected as described in Finding of Fact No. 3 and the

means of diversion element changed to a dam. These changes resolve RMW's objection to claim 43A 190672-00.

2. The notice-type issue remarks on each claim served their notice purpose and should be removed from the claims.

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:

Huppert, Swindlehurst & Woodruff, P.C.
PO Box 523
Livingston, MT 59047

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

Water Right Number: **43A 26073-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: RMW RANCH TRUST
% JOSEPH MICALLIF, TRUSTEE, FIDUCIARY COUNSELING
30 7TH ST E., STE 200
SAINT PAUL, MN 55101 4930

Priority Date: APRIL 9, 1947

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM.

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: UNNAMED TRIBUTARY OF LITTLE COTTONWOOD CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		N2NW	11	3N	8E	PARK

Period of Diversion: MAY 1 TO NOVEMBER 30
Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: MAY 1 TO NOVEMBER 30
Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			N2NW	11	3N	8E	PARK

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

Water Right Number: 43A 26075-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: RMW RANCH TRUST
% JOSEPH MICALLIF, TRUSTEE, FIDUCIARY COUNSELING
30 7TH ST E., STE 200
SAINT PAUL, MN 55101 4930

Priority Date: JUNE 23, 1953

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

***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: LITTLE COTTONWOOD CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		E2	2	3N	8E	PARK
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2	SESENW		2	3N	8E	PARK
Period of Diversion:	MAY 1 TO NOVEMBER 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3	E2NESW		2	3N	8E	PARK
Period of Diversion:	MAY 1 TO NOVEMBER 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4	NESESW		2	3N	8E	PARK
Period of Diversion:	MAY 1 TO NOVEMBER 30					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
*Reservoir:	ONSTREAM	Reservoir Name: COTTONWOOD RESERVOIR				
<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
NESWSW		1	3N	8E	PARK	

Diversion to Reservoir: DIVERSION # 1

Period of Use: MAY 1 TO NOVEMBER 30

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			E2	2	3N	8E	PARK
2			SESENW	2	3N	8E	PARK
3			E2NESW	2	3N	8E	PARK
4			NESESW	2	3N	8E	PARK

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

Water Right Number: **43A 26076-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: RMW RANCH TRUST
% JOSEPH MICALLIF, TRUSTEE, FIDUCIARY COUNSELING
30 7TH ST E., STE 200
SAINT PAUL, MN 55101 4930

Priority Date: MARCH 6, 1935

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM.

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: UNNAMED TRIBUTARY OF LITTLE COTTONWOOD CREEK
Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr	Sec	Twp	Rge	County
1		NW	2	3N	8E	PARK

Period of Diversion: MAY 1 TO NOVEMBER 30
Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: MAY 1 TO NOVEMBER 30
Place of Use:

ID	Acres	Govt Lot	Qtr	Sec	Twp	Rge	County
1			NW	2	3N	8E	PARK

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

Water Right Number: **43A 190671-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: RMW RANCH TRUST
% JOSEPH MICALLIF, TRUSTEE, FIDUCIARY COUNSELING
30 7TH ST E., STE 200
SAINT PAUL, MN 55101 4930

Priority Date: OCTOBER 15, 1958

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

***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:** UNNAMED TRIBUTARY OF LITTLE COTTONWOOD CREEK
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	SWSWSW	3	3N	8E	PARK	

Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DAM
***Reservoir:** ONSTREAM **Reservoir Name:** PARKS #2 RESERVOIR

<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
SWSWSW	3	3N	8E	PARK	

Diversion to Reservoir: DIVERSION # 1
Dam Height: 15.00 FEET
Surface Area: 0.40 ACRES
Capacity: 1.90 ACRE-FEET

Period of Use: MAY 1 TO DECEMBER 31
Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWSW	3	3N	8E	PARK	

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

Water Right Number: 43A 190672-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: RMW RANCH TRUST
% JOSEPH MICALLIF, TRUSTEE, FIDUCIARY COUNSELING
30 7TH ST E., STE 200
SAINT PAUL, MN 55101 4930

Priority Date: JULY 2, 1864

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

***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:** UNNAMED TRIBUTARY OF LITTLE COTTONWOOD CREEK
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		N2NENE	3	3N	8E	PARK

Period of Diversion: MAY 1 TO DECEMBER 31
Diversion Means: DAM
***Reservoir:** ONSTREAM **Reservoir Name:** UNNAMED

<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	N2NENE	3	3N	8E	PARK

Diversion to Reservoir: DIVERSION # 1
Dam Height: 11.00 FEET
Surface Area: 1.55 ACRES
Capacity: 4.95 ACRE-FEET
SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

Period of Use: MAY 1 TO DECEMBER 31
Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWNENE	3	3N	8E	PARK

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

Water Right Number: **43A 190673-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: RMW RANCH TRUST
% JOSEPH MICALLIF, TRUSTEE, FIDUCIARY COUNSELING
30 7TH ST E., STE 200
SAINT PAUL, MN 55101 4930

Priority Date: OCTOBER 15, 1958

Type of Historical Right: USE

Purpose (Use): STOCK

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

***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:** UNNAMED TRIBUTARY OF LITTLE COTTONWOOD CREEK
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENENE	4	3N	8E	PARK
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	DAM					
2		N2	3	3N	8E	PARK
Period of Diversion:	MAY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
*Reservoir:	ONSTREAM	Reservoir Name: UNNAMED (PARKS)				
	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
		NENENE	4	3N	8E	PARK

Diversion to Reservoir: DIVERSION # 1

Dam Height: 17.00 FEET

Surface Area: 0.33 ACRES

Capacity: 1.90 ACRE-FEET

Period of Use: MAY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENENE	4	3N	8E	PARK

2

N2 3 3N 8E PARK