

Montana Water Court
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ELECTRONICALLY FILED

43A-0292-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: Guy E Chriske Revocable Living Trust
Agreement

CASE: 43A-0292-R-2021
43A 191630-00

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

Claim 43A 191630-00 appeared in the Preliminary Decree for Basin 43A. Claim 43A 191630-00 received issue remarks during the DNRC's claims reexamination.

The claim was consolidated into Case 43A-0292-R-2021 to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 43A 191630-00 appeared in the Preliminary Decree as an irrigation claim. Claim 43A 191630-00 received the following issue remarks:

THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A FLOW RATE OF 1.75CFS.

A LATE OBJECTION HAS BEEN FILED TO THE FLOW RATE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

2. On June May 3, 2021, the Court set a filing deadline for the Claimant or Objector to file information or evidence addressing the issue remarks and supporting the late objection for claim 43A 191630-00.

3. On May 28, 2021, Late Objector, and trustee for Claimant, Guy Chriske filed a *Response* in which he states his agreeance with the modification to the flow rate recommended by the issue remark and states that were the modification applied to the flow rate element for claim 43A 191630-00 his Late Objection would 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 *Response* filed by Mr. Chriske along with the information contained in the flow rate issue remark overcomes the prima facie status of the Statement of Claim for claim 43A 191630-00. The flow rate element should be modified as described in Finding of Fact No. 1 and the issue remarks 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.

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:

Guy E Chriske
Revocable Living Trust Agreement
3402 Flathead Creek Rd W
Wilsall, Mt 59086-9536

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

Water Right Number: 43A 191630-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: CHRISKE, GUY E REVOCABLE LIVING TRUST AGREEMENT
3402 FLATHEAD CREEK RD W
WILLSALL, MT 59086 9536

Priority Date: APRIL 15, 1946

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.75 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: 3.00

Source Name: WASTE & SEEPAGE, UNNAMED TRIBUTARY OF FLATHEAD 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		NESENE	36	3N	6E	GALLATIN

Period of Diversion: APRIL 20 TO SEPTEMBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 20 TO SEPTEMBER 1

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	3.00		SWNWNW	31	3N	7E	GALLATIN

Total: 3.00