

Montana Water Court
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43A-0383-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: Behnam-Gamble Trust

OBJECTOR: Behnam-Gamble Trust

Case: 43A-0383-R-2021

43A 191345-00

43A 191346-00

43A 191347-00

43A 191348-00

43A 30116070

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

FINDINGS OF FACT

1. Claims 43A 191345-00, 43A 191346-00, 43A 191347-00, and 43A 191348-00, and 43A 30116070 were decreed with notice-type issue remarks.
2. Claimant Behnam-Gamble Trust objected to its own claims and a deadline was set for Claimant/Objector to provide additional detail to resolve the Objections.
3. On July 19, 2021, the Behnam-Gable Trust filed its Submission of Additional Information resolving the Objections, proposed abstracts, maps, and copies from the Gallatin Water Resource Survey were attached.

Claims 43A 191345-00, 43A 191346-00, 43A 191347-00:

4. Claims 43A 191345-00, 43A 191346-00, 43A 191347-00 were decreed with the place of use as:

***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	111.00		NE	26	3N	7E	GALLATIN
Total:	111.00						

5. Pursuant to the July 19, 2021 filing, the following place of use legal land description change should be made to claims 43A 191345-00, 43A 191346-00, 43A 191347-00:

***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	411.00	96.00	NE	26	3N	7E	GALLATIN
Total:	411.00	15.00	SE	26	3N	7E	GALLATIN

The map, depicting the place of use, provided by the Behnam-Gamble Trust in the July 19, 2021 filing is attached to this Report.

Claim 43A 191348-00:

6. Claim 43A 191348-00 was decreed with a single point of diversion:

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		SWSESW	35	3N	7E	GALLATIN
Period of Diversion:	MAY 1 TO SEPTEMBER 1					
Diversion Means:	HEADGATE					
Ditch Name:	ROBINSON DITCH					

7. The Behnam-Gamble Trust Objection indicates a second point of diversion should be added in the NWNE of Section 35. The July 19, 2021 filing explains the Statement of Claim omitted the Kime Ditch, a second point of diversion located in the SWNWNE of Section 35, Township 3 North, Range 7 East from Green Canyon Creek. The second point of diversion is reflected in the Water Resources Survey notes and map additionally a site visit and photographs confirmed the existence of the point of diversion at the following location:

Additional Proposed Point of Diversion and Means of Diversion:						
ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
2		SWNWNE	35	3N	7E	Gallatin
Period of Diversion: May 1 to September 1						
Diversion Means: Headgate						
Ditch Name: Kime Ditch						

The map, depicting both points of diversion, provided by the Behnam-Gamble Trust in the July 19, 2021 filing is attached to this Report.

Claim 43A 30116070:

8. The Behnam-Gamble Trust Objection to claim 43A 30116070-00 states:

There is a typographical error on the list of POD's and POU's. The SENESE of Section 26 is claimed and should be changed to the SWNESE of Section 26.

Based on the Objection, and a review of the record, and the Behnam-Gamble Trust's confirmation, the following correction to the point of diversion and place of use of claim 43A 30116070-00 is appropriate:

<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			SWNWSE	26	3N	7E	GALLATIN
2			SENWSE	26	3N	7E	GALLATIN
3			SWNESE	26	3N	7E	GALLATIN
4			NWNESE	26	3N	7E	GALLATIN
5			NENESE	26	3N	7E	GALLATIN
6			SESENE	26	3N	7E	GALLATIN

CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections received. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect.

This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R.; *Nelson v. Brooks*, 2014 MT 120, 375 Mont.86, 95, 329 P.3d 558, 564.

3. The notice issue remarks appearing on claim the claims in this Case provided notice of changes made to the claims after issuance of the Temporary Preliminary Decree. As the Objections have been resolved, no further proceedings are required.

RECOMMENDATIONS

1. Claims 43A 191345-00, 43A 191346-00, 43A 191347-00 should be changed as shown in Finding of Fact No. 5.

2. The Kime Ditch point of diversion, shown in Finding of Fact No. 7, should be added to claim 43A 191348-00.

3. Claim 43A 30116070 should be modified as shown in Finding of Fact No. 8.

4. The issue remarks should be removed from the claims in this Case.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended changes have been made in the DNRC's water rights database.

Anika M. Stern
Senior Water Master

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

Water Right Number: 43A 191345-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BEHNAM-GAMBLE TRUST
BEHNAM ALI & GAMBLE RAMSAY TRUSTEES
121 SAN PABLO AVE
SAN FRANCISCO, CA 94127 1535

Priority Date: MAY 25, 1883

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.00 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:** 111.00

Source Name: 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		SESWSE	28	3N	7E	GALLATIN

Period of Diversion: MAY 1 TO SEPTEMBER 1

Diversion Means: HEADGATE

Ditch Name: INABNIT-WOOSLEY-KIME DITCH

Period of Use: MAY 1 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	96.00		NE	26	3N	7E	GALLATIN
2	15.00		SE	26	3N	7E	GALLATIN
Total:	<u>111.00</u>						

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

Water Right Number: 43A 191346-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: BEHNAM-GAMBLE TRUST
BEHNAM ALI & GAMBLE RAMSAY TRUSTEES
121 SAN PABLO AVE
SAN FRANCISCO, CA 94127 1535

Priority Date: JUNE 25, 1899

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.00 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:** 111.00

Source Name: 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		SESWSE	28	3N	7E	GALLATIN

Period of Diversion: MAY 1 TO SEPTEMBER 1

Diversion Means: HEADGATE

Ditch Name: INABNIT-WOOSLEY-KIME DITCH

Period of Use: MAY 1 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	96.00		NE	26	3N	7E	GALLATIN
2	15.00		SE	26	3N	7E	GALLATIN
Total:	<u>111.00</u>						

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

Water Right Number: 43A 191347-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: BEHNAM-GAMBLE TRUST
BEHNAM ALI & GAMBLE RAMSAY TRUSTEES
121 SAN PABLO AVE
SAN FRANCISCO, CA 94127 1535

Priority Date: JUNE 25, 1898

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.00 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:** 111.00

Source Name: 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		SESWSE	28	3N	7E	GALLATIN

Period of Diversion: MAY 1 TO SEPTEMBER 1

Diversion Means: HEADGATE

Ditch Name: INABNIT-WOOSLEY-KIME DITCH

Period of Use: MAY 1 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	96.00		NE	26	3N	7E	GALLATIN
2	15.00		SE	26	3N	7E	GALLATIN
Total:	<u>111.00</u>						

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

Water Right Number: 43A 191348-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: BEHNAM-GAMBLE TRUST
BEHNAM ALI & GAMBLE RAMSAY TRUSTEES
121 SAN PABLO AVE
SAN FRANCISCO, CA 94127 1535

Priority Date: MAY 1, 1883

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.00 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: 46.00

Source Name: GREEN CANYON 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		SWSESW	35	3N	7E	GALLATIN

Period of Diversion: MAY 1 TO SEPTEMBER 1

Diversion Means: HEADGATE

Ditch Name: ROBINSON DITCH

2		SWNWNE	35	3N	7E	GALLATIN
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Period of Diversion: MAY 1 TO SEPTEMBER 1

Diversion Means: HEADGATE

Ditch Name: KIME DITCH

Period of Use: MAY 1 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	46.00		SE	26	3N	7E	GALLATIN

Total: 46.00

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

Water Right Number: 43A 30116070 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: BEHNAM-GAMBLE TRUST
BEHNAM ALI & GAMBLE RAMSAY TRUSTEES
121 SAN PABLO AVE
SAN FRANCISCO, CA 94127 1535

Priority Date: MAY 1, 1883

Type of Historical Right: USE

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: 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		SWNWSE	26	3N	7E	GALLATIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		SEWSE	26	3N	7E	GALLATIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		SWNESE	26	3N	7E	GALLATIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		NWNESE	26	3N	7E	GALLATIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		NENESE	26	3N	7E	GALLATIN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

6 SESENE 26 3N 7E GALLATIN

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			SWNWSE	26	3N	7E	GALLATIN
2			SEWSE	26	3N	7E	GALLATIN
3			SWNESE	26	3N	7E	GALLATIN
4			NWNESE	26	3N	7E	GALLATIN
5			NENESE	26	3N	7E	GALLATIN
6			SESENE	26	3N	7E	GALLATIN