

Montana Water Court
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43A-0385-R-2021

September 15, 2021

Montana Water Court

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

* * * * *

CLAIMANT: Robert J Phares

CASE 43A-0385-R-2021
43A 191925-00

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

FINDINGS OF FACT

1. Irrigation claim 43A 191925-00 was decreed with DNRC issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE GALLATIN COUNTY WATER RESOURCES SURVEY (1953) APPEARS TO INDICATE 178.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

2. An Order Consolidating and Setting Deadlines Pursuant to Section 85-2-248 (5), MCA was issued on May 28, 2021. The Order required Claimant Robert Phares to meet with the Department of Natural Resources and Conservation (DNRC) to address issue remarks with the DNRC.

3. On June 28, 2021, counsel for Robert J. Phares notified the Court that Robert J. Phares no longer own property serviced by claim 43A 191925-00 and that Robinson Ranch Inc. appears to be the new owner of the claim. The Court provided Robinson Ranch Inc. notice of its potential interest in claim 43A 191925-00 on July 1, 2021.

4. The Court ordered record owner Robert J. Phares and potential owner Robinson Ranch Inc. to meet with the DNRC to address the place of use issue remark and the flow rate issue remark appearing on claim 43A 191925-00.

5. On August 10, 2021, DNRC Water Resource Specialist Mary Crable filed a Memorandum indicating the place of use issue remark was placed on claim 43A 191925-00 in error. In short, Ms. Crable stated: "The DNRC does not consider this an issue under today's examination procedures and recommends both issue remarks be removed."

PRINCIPLES AND CONCLUSIONS 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. 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.

2. The ditch name issue remark appearing on claim 43A 191925-00 is a notice-type issue remark. No objections were filed and no further proceedings are required.

RECOMMENDATION

1. The issue remarks should be removed from claim 43A 191925-00. A Post Decree Abstract of Water Right Claim is served with the Report to confirm the terms of the claim in the state's centralized record system.

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 191925-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ROBERT J PHARES
PO BOX 60
CLYDE PARK, MT 59018 0060

Priority Date: JUNE 15, 1953

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 2.50 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: 211.00

Source Name: WASTE & SEEPAGE, UNNAMED TRIBUTARY OF FLATHEAD CREEK

Source Type: SURFACE WATER
THE SOURCE IS WATER COLLECTED IN A DRAIN DITCH.

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		E2	3	2N	7E	GALLATIN

Period of Diversion: APRIL 15 TO OCTOBER 15
Diversion Means: DITCH

Period of Use: APRIL 15 TO OCTOBER 15

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	40.00		NENE	35	3N	7E	GALLATIN
2	25.00		NWNE	35	3N	7E	GALLATIN
3	20.00		SWNE	35	3N	7E	GALLATIN
4	15.00		SENE	35	3N	7E	GALLATIN
5	20.00		NENW	35	3N	7E	GALLATIN
6	25.00		SENW	35	3N	7E	GALLATIN
7	25.00		NESW	35	3N	7E	GALLATIN
8	2.00		NWSW	35	3N	7E	GALLATIN
9	38.00		SWSW	35	3N	7E	GALLATIN
10	1.00		NWSE	35	3N	7E	GALLATIN
Total:	211.00						