

Montana Water Court
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ELECTRONICALLY FILED

43A-0443-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

CLAIMANTS: Patricia A. Arnold; Sharon J. Finch

NOTICE OF INTENT TO APPEAR: Arthun Ranch Inc; Shields
Valley Land and Cattle LLC

Case: 43A-0443-R-2021
43A 191906-00

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. Claim 43A 191906-00 is a high-water right decreed with a September 29, 1901 priority date decreed with the following DNRC priority-date issue remark:

THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED DECREE IS JULY 1, 1884.

2. No objections were filed. Shields Valley Land and Cattle LLC (SVLC) and Arthun Ranch Inc. filed Notices of Intent to Appear for claim 43A 191906-00.

3. Based on this Master's analysis, it appeared the priority date issue remark was added to claim 43A 191906-00 in error and the priority date should remain September 29, 1901—consistent with Case No. 12317, decreeing flood water on Rock Creek.

4. An Order Setting Filing Deadline was issued on June 16, 2021, setting a deadline for the Claimants to file a statement agreeing or disagreeing whether the priority date issue remark be removed from claim. The Order indicated if nothing was filed by the deadline, this Master would conclude the Claimants agreed the issue remark should be removed from the claim. The following statement was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

5. The June 16, 2021 Order also set a deadline for Notice of Intent to Appear parties SVLC and Arthun Ranch Inc. to file statements indicating how they intended to prosecute the Notices of Intent to Appear.

6. The Water Court received returned mail for co-owners of claim 43A 191906-00, Patricia A. Arnold and Sharon J. Finch. An ownership update was submitted in 2020 transferring water right claims from Patricia A. Arnold and Sharon J. Finch to Rocky Creek Lane, LLC, including claim 43A 191906-00, in this Case. Unfortunately, the required DNRC fee was not paid in full. An Order on Ownership was issued on June 24, 2021, alerting Rocky Creek Lane, LLC of its probable interest in claim 43A 191906-

00 and ordering it to update ownership (if applicable) and to comply with the June 16, 2021 Order Setting Filing Deadline.

7. On July 23, 2021, Benjamin Sudduth filed a Notice of Appearance and Status Report on behalf of Peggy S. Sundling and Timothy R. Sundling (“Sundlings”). Mr. Sudduth notified the Court that ownership of the property appurtenant to claim 43A 191906-00 transferred to the Sundlings and that they were in the process of filing an ownership update for claim 43A 191906-00. Because an ownership update has not yet been processed with the DNRC, the Sundlings are potential owners; the caption has not been updated to reflect them as a party in the Case. Mr. Sudduth will be added to the service list on behalf of the Sundlings when DNRC processes the ownership update.

8. The July 23, 2021 Notice of Appearance and Status Report indicates the Sundlings agreed the priority date issue remark decreed on claim 43A 191906-00 should be removed from the claim.

9. On July 29, 2021, Notice of Intent to Appear Party SVLC filed a Comment in Response to Filing Deadline indicating it agrees the priority date issue remark was added to claim 43A 191906-00 in error and should be removed from the claim. SVLC indicated its NOIA is resolved if the Court removes the issue remark and decrees the claim as it appeared in the Preliminary Decree with a September 29, 1901 priority date.

10. On August 20, 2021, Arthun Ranch, Inc. filed its Response to Filing Deadline stating its Notice of Intent to Appear is resolved if the priority date of claim 43A 191906-00 remains September 29, 1901 and the priority date issue remark is removed from the claim.

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. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

Record owners Patricia A. Arnold and Sharon J. Finch did not comply with the Order Setting Filing Deadline. However, potential owners Peggy S. Sundling and Timothy R. Sundling agree the issue remark should be removed from claim 43A 191906-00. It is appropriate to remove the issue remark from the claim.

RECOMMENDATION

1. The issue remark should be removed from claim 43A 191906-00.

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

Service Via Electronic Mail:

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Service via USPS Mail:

Patricia A Arnold
Sharon J Finch
~~87 Rocky Creek Lane~~
~~Livingston, MT 59047~~
(Return mail no forwarding address)

(Potential Owners)
Rocky Creek Lane, LLC
9 Driftwood Lane
Livingston, MT 59047-9224

Note: Service List Updated 9/3/21

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

Water Right Number: 43A 191906-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: PATRICIA A ARNOLD
87 ROCKY CREEK LANE
LIVINGSTON, MT 59047
SHARON J FINCH
87 ROCKY CREEK LN
LIVINGSTON, MT 59047 9321

Priority Date: SEPTEMBER 29, 1901

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.70 CFS

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

Climatic Area: 3 - MODERATE

Maximum Acres: 59.00

Source Name: ROCK 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		SENWNW	1	1N	9E	PARK

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: GILBERT-QUEEN DITCH

Period of Use: MAY 1 TO OCTOBER 31

THIS RIGHT IS LIMITED TO HIGH OR FLOOD WATERS OF ROCK CREEK.

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	59.00		SE	2	1N	9E	PARK
Total:	59.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

191906-00

191907-00