

Montana Water Court
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43A-0454-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

CLAIMANTS: Fiddle Creek LLC

CASE: 43A-0454-R-2021
43A 35348-00
43A 35349-00

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 35348-00 was decreed with the following flow rate issue remark:

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 18.00 GPM PER ACRE.

2. Claim 43A 35349-00 appeared in the Preliminary Decree with an issue remark that provided notice of changes made after completion of the Temporary Preliminary Decree proceedings and prior to issuance of the Preliminary Decree.

3. No Objections were filed.

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. 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 Water Court must address all issue remarks that appear on a claim. Section 85-2-248, MCA.

CONCLUSIONS OF LAW

1. The DNRC flow rate issue remark is not supported by evidence sufficient to overcome the prima facie status afforded the flow rate element of claim 43A 35348-00. The remark should be removed from the claim.

2. The issue remark appearing on claim 43A 35349-00 in this Case is a notice-type issue remark. As no objections were filed, no further proceedings are required, and the remark should be removed.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

Eugene C. White
Water Master

Service via USPS Mail:

Fiddle Creek LLC
6100 Jackson Creek Rd
Bozeman, MT 59715

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

Water Right Number: 43A 35348-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: FIDDLE CREEK LLC
6100 JACKSON CREEK RD
BOZEMAN, MT 59715

Priority Date: JULY 10, 1895

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 5.00 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: 127.00

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		SWNE	28	2N	10E	PARK

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: CHADBOURNE DITCH

Period of Use: MAY 1 TO OCTOBER 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	20.00		NWNE	29	1N	10E	PARK
2	90.00		NW	29	1N	10E	PARK
3	17.00		N2SENE	30	1N	10E	PARK
Total:	<u>127.00</u>						

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.

35348-00 35349-00

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

Water Right Number: 43A 35349-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: FIDDLE CREEK LLC
 6100 JACKSON CREEK RD
 BOZEMAN, MT 59715

Priority Date: JULY 1, 1893

Type of Historical Right: DECREED

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: 3 - MODERATE

Maximum Acres: 127.00

Source Name: TOBIN 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		SESENE	18	1N	10E	PARK

Period of Diversion: MAY 1 TO NOVEMBER 1
Diversion Means: HEADGATE
Ditch Name: TAYLOR-CHADBOURNE-FLATT DITCH

Period of Use: MAY 1 TO NOVEMBER 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	90.00		N2NW	29	1N	10E	PARK
2	20.00		NWNE	29	1N	10E	PARK
3	17.00		N2SENE	30	1N	10E	PARK
Total:	127.00						

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.