

Montana Water Court
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ELECTRONICALLY FILED

43A-0533-R-2020

September 16, 2021

Montana Water Court

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

* * * * *

CLAIMANTS: Irene Croston; Hayhook Land, LLC; MS
Hooks Ranch, LLC; Cathy S. Ritter;
Thomas A. Ritter; Richard C. Spallone;
Shields River Enterprise; **Michael
McDaniel**

CASE 43A-0533-R-2020
43A 35320-00
43A 30120533

NOTICE OF INTENT TO APPEAR: Richard C. Spallone

ON MOTION OF THE WATER COURT

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. If 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. On February 26, 2021, the Montana DNRC processed an ownership update, adding Michael McDaniel as a co-owner of claim 43A 35320-00. Michael McDaniel is added to the caption and service list for Case 43A-0533-R-2020.

2. Claims 43A 35320-00 and 43A 30120533 are split claims. The co-owners of claim 43A 35320-00 are Irene Croston, Hayhook Land, LLC, Michael McDonald, MS Hooks Ranch, LLC, Cathy S. Ritter, Thomas A. Ritter, and Richard C. Spallone. The Shields River Enterprise owns claim 43A 30120533.

3. Richard C. Spallone filed a Notice of Intent to Appear to claim 43A 30120533.

4. The Statement of Claim for parent claim 43A 35320-00 indicated the source was the Shields River. The Preliminary Decree for claims 43A 35320-00 and 43A 30120533 shows the source as the Shields River and the priority date and type of historical right for both claims as November 1, 1883 decreed claims. However, the copy of the decree supporting the type of historical right and priority date attached to the Statement of Claim for claim 43A 35320-00 is a page from Case No. 2717, indicating the claims claimed a portion of the 160 miner's inch Chadbourn right from *Bangtail Creek*.

5. As it appeared the DNRC may have failed to place an issue remark questioning the priority date and type of historical right on the claims, claims 43A 35320-00 and 43A 30120533 were called in on motion of the Court.

6. An Order Setting Filing Deadline was issued. The Order set a deadline for the Claimants to provide additional information resolving the Court's on motion concerns and a deadline was set for Richard Spallone to indicate how the Notice of Intent to Appear should be resolved. The Order stated that if nothing was filed by the deadline, this Master would conclude Richard Spallone does not intend to pursue the Notice of Intent to Appear and this Master will recommend its dismissal.

7. On July 15, 2021, counsel for Richard C. Spallone filed Notice of Additional Information. The July 15, 2021 filing explained the portion of Case No. 2717 attached to the Statement of Claim is for the irrigation and for other useful purposes of Lot 2 and the SENW and the S2NE of Section 30, Township 1 North, Range 10 East from Bangtail Creek. Claim 43A 35320-00 is for stock drinking directly from the Shields River in Sections 29, 30, and 32 of, Township 1 North, Range 10 East. In addition to irrigation from Bangtail Creek starting in November of 1883, Case No. 2717 states Sections 29, 30 and 32 were irrigated and used for other useful purposes with water from Kay Creek, the Shield River and Willow Creek starting June 1, 1883. A map was included with July 15, 2021 filing showing the proximity of Kay Creek and Willow Creek within Section 30 and 32, respectively, to the Shields River.

Spallone argued that logic dictates that unless livestock were fenced out, they drank from the Shields River starting June 1, 1883 when water from Kay Creek, the Shields River, and Willow Creek were put to beneficial use in these sections. Spallone requests correcting the type of historical right for claim 43A 35320-00 to a use rights and correcting the priority date to June 1, 1883. According to Spallone, Hayhook Land, LLC agrees with the proposed changes.

8. Nothing was filed by the other parties. If the other Claimants object to the Recommendations in this Master's Report, they should object as described in the Notice of Filing of Master's Report.

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.

3. The Courts on motion concerns are resolved if the recommended changes are made.

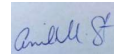
RECOMMENDATIONS

1. Claim 43A 35320-00 should be changed from a decreed right to a use right. The priority date for claim 43A 35320-00 should be changed from November 1, 1883 to June 1, 1883.

2. As claim 43A 30120533 is a split claim, based on parent claim 43A 35320-00, it should also be changed to a use right with a June 1, 1883 priority date.

3. Richard Spallone's Notice of Intent to Appear should be dismissed.

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.



Digitally signed by Anika M. Stern
Date: 2021.09.14 14:22:53 -06'00'

Anika M. Stern
Senior Water Master

Service via USPS Mail:

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Livingston, MT 59047-9405

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Note: Caption and Service List updated 8.1.21

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

Water Right Number: **43A 35320-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:

IRENE CROSTON
7 CASTLE MOUNTAIN RD
LIVINGSTON, MT 59047 9405

MICHAEL MCDANIEL
PO BOX 2555
LIVINGSTON, MT 59047

CATHY S RITTER
7 CAMPITELLI CT
REISTERSTOWN, MD 21136 6039

THOMAS A RITTER
7 CAMPITELLI CT
REISTERSTOWN, MD 21136 6039

RICHARD C SPALLONE
840 HWY 89 N
LIVINGSTON, MT 59047

HAYHOOK LAND LLC
1067 US HIGHWAY 89 N
LIVINGSTON, MT 59047 9340

MS HOOKS RANCH LLC
45 SHEFFIELD PLACE
SOUTHINGTON, CT 06489

Priority Date: JUNE 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: SHIELDS RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
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1	29	1N	10E	PARK
Period of Diversion: JANUARY 1 TO DECEMBER 31				
Diversion Means: LIVESTOCK DIRECT FROM SOURCE				
2	30	1N	10E	PARK
Period of Diversion: JANUARY 1 TO DECEMBER 31				
Diversion Means: LIVESTOCK DIRECT FROM SOURCE				
3	32	1N	10E	PARK
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</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1				29	1N	10E	PARK
2				30	1N	10E	PARK
3				32	1N	10E	PARK

Remarks:

SPLIT CLAIM NO. 43A 30120533 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

Water Right Number: **43A 30120533** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SHIELDS RIVER ENTERPRISE
 1825 SWINGLEY RD
 MC LEOD, MT 59052

Priority Date: JUNE 1, 1883

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK
 DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM.

Volume: THIS WATER 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: SHIELDS RIVER

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			30	1N	10E	PARK

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				30	1N	10E	PARK

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 43A 35320-00.