

Montana Water Court
P.O. Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

43A-0558-R-2020

September 15, 2021

Montana Water Court

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

CLAIMANT: Sacagawae Meadows Ranch, LP

CASE 43A-0558-R-2020

43A 60166-00

43A 60486-00

OBJECTOR: Sacagawae Meadows Ranch, LP

NOTICE OF INTENT TO APPEAR: Westering Home, LLC

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. The record owner of claims 43A 60166-00 and 43A 60486-00 is Sacagawae Meadows Ranch, LP (SMR).

2. Claim 43A 60166-00 was decreed with an issue remark:

A CLERICAL CORRECTION HAS BEEN MADE TO THE PURPOSE. BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHT MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

3. SMR is objected to claims 43A 60166-00 and 43A 60486-00 and Westering Home, LLC (Westering Home) filed a Notice of Intent to Appear to claim 43A 60166-00.

4. The parties filed a Stipulation on June 14, 2021, resolving the Objections and the Notice of Intent to Appear. Pursuant to the Stipulation, the purpose of claim 43A 60166-00 should be changed from “institutional” to “domestic recreation.”

5. The DNRC Water Rights Database has limitations and unfortunately, claim purposes are limited to a standardized purpose list referenced in Rule 27(a), W.R.C.E.R. and listed in Figure VI-1 of the DNRC Claim Examination Manual. Remarks can be added to claims, providing additional information.

6. As “domestic recreation” is not a standardized purpose, an Order Setting Filing Deadline was issued, ordering the parties in Case 43A-0558-R-2020 to file a statement clarifying the purpose of 43A 60166-00.

7. On July 28, 2021, SWR filed a Response to the Order Setting Filing Deadline clarifying the purpose for claim 43A 60166-00 as “domestic” and indicated that the following remark be added “THE PURPOSE IS DOMESTIC USE AT A RECREATIONAL SITE.” The July 28, 2021 filing indicated Westering Home did not object to the proposed change.

8. The June 17, 2021 Order Setting Filing Deadline also set a deadline for SMR to indicate how its Objection to claim 43A 60486-00 should be resolved. The August 7, 2019 Objection to claim 43A 60486-00 stated:

The Period of Diversion and Period of Use should be year-round. The abstract for this Water Right Claim shows a Period of Diversion and Period of Use of July 1 to September 30. These dates are inconsistent with historical and current practice.

The July 28, 2021 filing indicates the period of diversion and period of use for claim 43A 60486-00 should be changed from “July 1 to September 30” to year round.

CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives. 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.

RECOMMENDATIONS

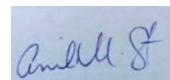
1. Claim 43A 60166-00 should be changed as follows:

*Purpose (Use): **INSTITUTIONAL DOMESTIC**
PU: THE PURPOSE IS DOMESTIC USE AT A RECREATIONAL SITE.

The issue remark should be removed from claim 43A 60166-00.

2. The period of diversion and period of use for claim 43A 60486-00 should be changed to January to December 31.

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 14:24:01 -06'00'

Anika M. Stern
Senior Water Master

Service Via Electronic Mail:

Ross P. Keogh
John Cutler
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City UT 84111
(406) 721-3400
(406) 317-7220
rkeogh@parsonsbehle.com
SSchwarz@parsonsbehle.com
docket@parsonsbehle.com

Note: Service List Updated 9-15-21

Michael J. L. Cusick
Cusick, Farve, Mattick & Refling, P.C. P.O. Box 1288
Bozeman, MT 59771-1288
(406) 587-5511
office@cmrlawmt.com

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

Water Right Number: **43A 60166-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: SACAGAWAE MEADOWS RANCH LP
PO BOX 3238
WALNUT CREEK, CA 94598 0238

Priority Date: JULY 1, 1930

Type of Historical Right: USE

***Purpose (Use):** DOMESTIC
THE PURPOSE IS DOMESTIC USE AT A RECREATIONAL SITE.

***Flow Rate:** 26.92 GPM

Volume: 0.20 AC-FT

Source Name: BRACKETT CREEK, MIDDLE FORK

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		SWSWSE	6	1N	7E	GALLATIN

Period of Diversion: JUNE 1 TO SEPTEMBER 30

Diversion Means: OTHER DIVERSION
THE MEANS OF DIVERSION IS A BUCKET.

Period of Use: JUNE 1 TO SEPTEMBER 30

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			SWSWSE	6	1N	7E	GALLATIN

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

Water Right Number: **43A 60486-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: SACAGAWAE MEADOWS RANCH LP
PO BOX 3238
WALNUT CREEK, CA 94598 0238

Priority Date: JULY 1, 1878

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: BRACKETT CREEK, MIDDLE FORK
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>Twp</u>	<u>Rge</u>	<u>County</u>
1	S2S2S2		6	1N	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</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2S2S2		6	1N	7E	GALLATIN