

Montana Water Court
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43A-0573-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: John C. Burdick; Florence Shannon

CASE 43A-0573-R-2021
43A 16100-00

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 16100-00 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 22.00 GPM PER ACRE.

2. Claim 43A 16100-00 also appeared with a notice-type issue remark denoting changes made to the claim during the DNRC's reexamination of claims.

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 16100-00. Therefore, the remark should be removed from the claim.

2. The notice-type issue remark appearing on claim 43A 16100-00 served its notice purpose and should be removed from the claim.

RECOMMENDATIONS

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

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

Eugene C. White
Water Master

Service via USPS Mail:

John C. Burdick
23 Sagebrush Rd N
Livingston, MT 59047

Florence Shannon
PO Box 1884
Livingston, MT 59047-1884

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

Water Right Number: 43A 16100-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JOHN C BURDICK
23 SAGEBRUSH RD N
LIVINGSTON, MT 59047

FLORENCE SHANNON
PO BOX 1884
LIVINGSTON, MT 59047 1884

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE OWNERS.

Priority Date: AUGUST 14, 1893

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.00 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: 20.00

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		SWNESE	32	1N	10E	PARK

Period of Diversion: MARCH 15 TO NOVEMBER 30

Diversion Means: HEADGATE

Ditch Name: MCNIVEN DITCH

Period of Use: MARCH 15 TO NOVEMBER 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	20.00		NENW	9	1S	10E	PARK

Total: 20.00