

Montana Water Court
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43A-0623-R-2022

August 17, 2022

Montana Water Court

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

* * * * *

CLAIMANT: Fred & Yvonne Ley Trust

CASE 43A-0623-R-2022
 43A 10044-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the 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

The above-captioned claim appeared in the Preliminary Decree for Basin 43A. The claims did not receive objections or notices of intent to appear, but did receive issue remarks during the DNRC's claims reexamination.

The claim was consolidated into Case 43A-0619-R-2022 to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 10044-00 appeared in the Preliminary Decree for Basin 43A as an irrigation claim. Claim 43A 10044-00 received the following substantive issue remark:

MUTUAL DITCH POD IS AT SWSWNW SEC. 20 T3N R9E. POD NO. 1 APPEARS TO BE A SECONDARY DIVERSION FROM THE MUTUAL DITCH.

2. On February 25, 2022, the Court set a filing deadline requiring the Claimants to work with the DNRC under §85-2-248(5), MCA to address the issue remarks on the claims.

3. On March 31, 2022, DNRC Water Resources Specialist Mary Crable filed her *Memorandum* in this matter. Ms. Crable's *Memo* states that she was contacted by Fred Ley, on behalf of Claimant Fred and Yvonne Ley Trust, on March 22, 2022, and again on March 28, 2022, when he stated his agreement with the content of the *Memo*. In her *Memo*, Ms. Crable states that on March 16, 1981, the Statement of Claim and Application for Change of Appropriation were filed for claim 43A 10044-00. As a result, the DNRC authorized a change of the means of diversion and point of diversion from the Mutual Ditch in the SWSWNW of Section 20, Twp 3N, Rge 9E, Park County, to a pump drawing directly from the Shields River in the SESESE of Section 19, Twp 3N, Rge 9E, Park County. Although the change to the point of diversion and means of diversion was accepted, the ditch name, Mutual Ditch, was erroneously left on the claim. Ms. Crable's *Memo* goes on to say that the DNRC recommends resolving the issue by simply removing the ditch name from the abstract.

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; Rule 10, W.R.Adj.R.

2. *Prima facie* proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.ADJ.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

CONCLUSIONS OF LAW

1. The evidence in the record is sufficient to resolve the issue remark placed on the above-captioned claim.

2. Based on the information contained in Ms. Crable’s *Memo*, the ditch name should be removed from the abstract, and the issue remarks 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.

A post decree abstract of water right claim 43A 10044-00 reflecting the recommended changes is attached to this Report.

Eugene C. White
Water Master

Service via USPS Mail:

Fred & Yvonne Ley Trust
PO Box 11044
Bozeman, MT 59719-1044

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
SHIELDS RIVER
BASIN 43A

Water Right Number: **43A 10044-00 STATEMENT OF CLAIM**

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:
LEY, FRED & YVONNE TRUST
PO BOX 11044
BOZEMAN, MT 59719 1044

Priority Date: JUNE 1, 1884

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 80.78 GPM

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

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 7.33

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		SESESE	19	3N	9E	PARK

***Period of Diversion:** MARCH 15 TO OCTOBER 15

Diversion Means: PUMP

***Period of Use:** MARCH 15 TO OCTOBER 15

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	7.33		SESESE	19	3N	9E	PARK
Total:	7.33						

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.

10044-00 10045-00

FILE REFLECTS AUTHORIZATION TO CHANGE POINT OF DIVERSION COMPLETED 05/27/1983.