

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

\* \* \* \* \*

CLAIMANTS: Jones Family Living Trust; Montana Mini-  
Storage & Rentals LLC; William A.  
Sarrazin

**CASE 43A-0209-R-2020**  
43A 113181-00  
43A 113182-00  
43A 113183-00

OBJECTOR: William A. Sarrazin

**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**

The above-captioned claims appeared in the Preliminary Decree for Basin 43A. The claims are owned by Jones Family Living Trust, Montana Mini-Storage & Rentals LLC, and William Sarrazin. The claims received an Objection from claimant William Sarrazin and issue remarks during the DNRC's claims reexamination.

The claims were consolidated into Case 43A-0209-R-2020 to resolve the Objection and issue remarks.

### **FINDINGS OF FACT**

1. Claim 43A 113181-00 received an issue remark from the DNRC stating:  
THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED DECREE IS JULY 2, 1892 AND JULY 8, 1894.

Claim 43A 113182-00 received an issue remark from the DNRC stating:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NENWNW SEC 23 TWP 2N RGE 9E PARK COUNTY.

Claim 43A 113183-00 received an issue remark from the DNRC stating:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NENWNW SEC 23 TWP 2N RGE 9E PARK COUNTY.

2. A Status Conference for Case 43A-0209-R-2020 took place on January 13, 2021, by telephone conference call. Water Master Eugene C. White presided; Sean Jones was present on behalf of claimants Jones Family Living Trust and Montana Mini-Storage & Rentals LLC; and Claimant/Objector William A. Sarrazin was present for the conference. During the conference, Mr. Sarrazin explained the basis of his objection. All parties agreed to a 90-day filing deadline to file settlement documents.

3. On April 1, 2021, Claimant Jones Family Living Trust filed a *Statement* addressing the Objection and recapping a discussion with claimant/objector William

Sarrazin. The *Statement* goes on to say that Jones Family Living Trust considers the objection resolved.

4. On May 18, 2021, the Court set a filing deadline for Claimant/Objector William Sarrazin to file a statement clarifying his position regarding the status of his objection in Case 43A-0209-R-2020. Nothing was filed by the ordered deadline.

5. On September 30, 2021, William Sarrazin filed a *Statement* explaining that he considers the objection resolved.

6. On January 10, 2022, the Court set a filing deadline for the Claimants to file information or evidence addressing and resolving the above-listed issue remarks.

7. William Sarrazin filed a *Response* on January 24, 2022 to the Court's January 10, 2022, Order. In his *Response*, Mr. Sarrazin states that he agrees that the priority dates on the submitted decree for 43A 113181-00 are July 2, 1892, and July 8, 1894, however, he asserts that the proposed modification to the point of diversion for claim 43A 113182-00 and 43A 113183-00 appears to be incorrect. Further, Mr. Sarrazin's *Response* states that the points of diversion for both claims should read SENWNW SEC 23, TWP 2N, Rge 9E, Park County. This description matches the legal land description already appearing on the abstract for the place of use for claim 43A 113182-00 and, according to Mr. Sarrazin, modifying the point of diversion for claim 43A 113183-00 to match would bring the claim into historical conformity.

8. Claim 43A 113181-00 also received a notice-type issue remark from the DNRC denoting modifications to the point of diversion. No Objections were filed to the point of diversion for claim 43A 113181-00.

#### 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.

8. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

### CONCLUSIONS OF LAW

1. The evidence in the record is sufficient to resolve the objections and issue remarks placed on the above-captioned claims.

2. The statement made in the *Response* filed by Shaun Jones on behalf of Jones Family Living Trust and Montana Mini-Storage and Rentals LLC, and the statement made by Mr. Sarrazin in his September 30, 2021, *Response* denote that all parties consider the Objections withdrawn. The Objections should be considered resolved and removed from the claims.

3. The priority date issue remark appearing on claim 43A 113181-00 coupled with Mr. Sarrazin's statement in his January 24, 2022, *Response* overcomes the prima facia status of the statement of claim and the Priority date should be modified to July 2, 1892. The point of diversion issue remarks appearing on claims 43A 113182-00 and 43A 113183-00 do not overcome the prima facia status of the statements of claim. Therefore, the point of diversion for claim 43A 113182-00 should remain SENWNW SEC 23, TWP 2N, RGE 9E, Park County, as it appears on the abstract. The point of diversion for claim 43A 113183-00 should be modified to SENWNW SEC 23, TWP 2N, Rge 9E, Park County to conform the claim with historical usage.

4. The notice-type issue remark appearing on claim 43A 113181-00 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.

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

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Eugene C. White  
Water Master

**Service via USPS Mail:**  
Jones Family Living Trust  
PO Box 134  
Clyde Park, MT 59018

Montana Mini-Storage & Rentals LLC  
PO Box 134  
Clyde Park, MT 59018

William A. Sarrazin  
PO Box 146  
Clyde Park, MT 59018

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

**Water Right Number:** 43A 113181-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**

WILLIAM A SARRAZIN  
PO BOX 146  
CLYDE PARK, MT 59018

JONES FAMILY LIVING TRUST  
PO BOX 134  
CLYDE PARK, MT 59018

MONTANA MINI-STORAGE & RENTALS LLC  
PO BOX 134  
CLYDE PARK, MT 59018

**Priority Date:** JULY 2, 1892

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FURROW/FLOOD

**Flow Rate:** 4.00 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:** 320.00

**Source Name** COTTONWOOD 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		NENWNW	23	2N	9E	PARK

**Period of Diversion:** MARCH 1 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** EGELER-SHURRER-GIBSON DITCH

**Period of Use:** MARCH 1 TO OCTOBER 1

THIS RIGHT INCLUDES HIGH OR FLOOD WATERS OF COTTONWOOD CREEK.

**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	80.00		N2NE	34	2N	9E	PARK
2	40.00		SENE	34	2N	9E	PARK
3	40.00		N2NW	34	2N	9E	PARK
4	160.00		NW	35	2N	9E	PARK

**Total:** 320.00

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**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.

113181-00

113182-00

113183-00

113184-00

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

**Water Right Number:** 43A 113182-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**

WILLIAM A SARRAZIN  
PO BOX 146  
CLYDE PARK, MT 59018

JONES FAMILY LIVING TRUST  
PO BOX 134  
CLYDE PARK, MT 59018

MONTANA MINI-STORAGE & RENTALS LLC  
PO BOX 134  
CLYDE PARK, MT 59018

**Priority Date:** JULY 2, 1892

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FURROW/FLOOD

**Flow Rate:** 3.00 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:** 320.00

**Source Name** COTTONWOOD 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		SENWNW	23	2N	9E	PARK

**Period of Diversion:** MARCH 1 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** EGELER-SHURRER-GIBSON DITCH

**Period of Use:** MARCH 1 TO OCTOBER 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	80.00		N2NE	34	2N	9E	PARK
2	40.00		SENE	34	2N	9E	PARK
3	40.00		N2NW	34	2N	9E	PARK
4	160.00		NW	35	2N	9E	PARK

**Total:** 320.00

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**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.

113181-00          113182-00          113183-00          113184-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

113182-00          113185-00

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

**Water Right Number:** 43A 113183-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**

WILLIAM A SARRAZIN  
PO BOX 146  
CLYDE PARK, MT 59018

JONES FAMILY LIVING TRUST  
PO BOX 134  
CLYDE PARK, MT 59018

MONTANA MINI-STORAGE & RENTALS LLC  
PO BOX 134  
CLYDE PARK, MT 59018

**Priority Date:** JULY 8, 1894

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FURROW/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:** 320.00

**Source Name** COTTONWOOD 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		SENWNW	23	2N	9E	PARK

**Period of Diversion:** MARCH 1 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** EGELER-SHURRER-GIBSON DITCH

**Period of Use:** MARCH 1 TO OCTOBER 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	80.00		N2NE	34	2N	9E	PARK
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**Total:** 320.00

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113181-00

113182-00

113183-00

113184-00