

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

* * * * *

CLAIMANT: Arthun Ranch, Inc.

OBJECTORS: Arthun Ranch, Inc.; 4 Diamond Ranch at
Wallrock, LLC

NOTICE OF INTENT TO APPEAR: 4 Diamond Ranch at
Wallrock, LLC

CASE 43A-0230-R-2022

43A 190769-00

43A 190771-00

43A 212636-00

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

FINDINGS OF FACT

1. Arthun Ranch, Inc. is the record owner of claims 43A 190769-00, 43A 190771-00, and 43A 212636-00.

2. Claims 43A 190769-00 and 43A 212636-00 were decreed with DNRC issue remarks:

43A 190769-00:

THE LEGAL LAND DESCRIPTION FOR POINT OF DIVERSION NO. 2 COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THIS CLAIMED POINT OF DIVERSION CANNOT BE CONFIRMED.

43A 212636-00:

AN AMENDMENT WAS SUBMITTED ON 07/17/2018 REQUESTING TO AMEND THE PLACE OF USE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED BY THE COURT AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

AN AMENDMENT WAS SUBMITTED ON 07/02/2018 REQUESTING TO AMEND THE TYPE OF IRRIGATION, PERIOD OF DIVERSION, PRIORITY DATE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT 176.5 ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH VOLUME AND PLACE OF USE.

CLAIM FILED LATE 10/06/1988 . IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

RESERVOIR RECORD WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON KAVANAUGH CREEK WITH A PRIORITY DATE PREDATING CASE NO 2717, PARK COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

3. Arthun objected to its own claims in this Case. 4 Diamond Ranch at Wallrock LLC (4 Diamond) filed Notices of Intent to Appear for claims 43A 190765-00 and 43A 190771-00 and objected to claim 43A 212636-00

4. Initially, the claims in this Case were consolidated into Case 43A-0012-R-2020, along with claim 43A 190765-00. Unless otherwise referenced, the proceedings referenced in this Order took place in the context of Case 43A-0012-R-2020.

5. A Scheduling Order was issued in Case 43A-0012-R-2020 on September 9, 2020.

6. On December 23, 2021, Arthun filed a Motion to Amend, indicating the Objection to claim 43A 190769-00 will be resolved if the proposed changes are

implemented. Pursuant to the Motion to Amend, the following changes should be made to claim 43A 190769-00:

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		SESENW	21	5N	9E	PARK
Source Name: SPRING, UNNAMED TRIBUTARY OF KAVANAUGH CREEK						
*Period of Diversion: MARCH 15 TO OCTOBER 15						
Diversion Means: DIKE						
2		SESESW	21	5N	9E	PARK
Source Name: UNNAMED TRIBUTARY OF KAVANAUGH CREEK						
*Period of Diversion: MARCH 15 TO OCTOBER 15						
Diversion Means: DIKE						

PODs 2 through 4:

2	SESWNE	21	5N	9E	PARK
Period of Diversion: MARCH 15 TO OCTOBER 15					
Source Name: UNNAMED TRIBUTARY OF KAVANAUGH CREEK					
Diversion Means: HEADGATE					
3	NWSWSE	21	5N	9E	PARK
Period of Diversion: MARCH 15 TO OCTOBER 15					
Source Name: UNNAMED TRIBUTARY OF KAVANAUGH CREEK					
Diversion Means: HEADGATE					
4	SWSWSE	21	5N	9E	PARK
Source Name: UNNAMED TRIBUTARY OF KAVANAUGH CREEK					
Period of Diversion: MARCH 15 TO OCTOBER 15					
Diversion Means: HEADGATE					

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	46.00	20.00	S2NE	S2SWNE	21	5N	9E PARK
2	77.00	81.00		SE	21	5N	9E PARK
3	44.00	2.00	E2SENW	E2E2W2	21	5N	9E PARK
Total:		103.00					

7. On January 7, 2022, Arthun unconditionally withdrew the Objection to claim 43A 190771-00; and on April 13, 2022, 4 Diamond unconditionally withdrew the Notice of Intent to Appear.

8. On April 15, 2022, Arthun filed Motions to Amend claims 43A 190765-00 and 43A 212636-00; the filing implied that if the proposed changes were made to the claims, the Arthun Objections would be resolved. On April 29, 2022, 4 Diamond filed a Response to Amendments Requested by Arthun. The April 29, 2022 4 Diamond filing indicated 4 Diamond did not object to the proposed Amendment to claim 43A 212636-00, but 4 Diamond did object to the proposed Amendment for claim 43A 190765-00.

9. The proposed Amendment for claim 43A 212636-00 indicates the following changes should be made:

Priority Date: ~~JUNE 10, 1886~~ **JUNE 1, 1959**

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 10/06/1988 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Purpose (use): IRRIGATION

Irrigation Type: ~~FLOOD~~ **FLOOD/SPRINKLER**

Maximum Acres: ~~220.80~~ **215.00**

Period of Diversion: ~~APRIL 1 TO OCTOBER 15~~ **JANUARY 1 TO DECEMBER 31**

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	82.80		E2	21	5N	9E	PARK
2	147.20		E2	28	5N	9E	PARK
Total:	229.80						

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	8.0		E2SWNE	21	5N	9E	PARK
2	2.0		SWSENE	21	5N	9E	PARK
3	78.0		SE	21	5N	9E	PARK
4	79.0		NE	28	5N	9E	PARK
5	48.0		NE	28	5N	9E	PARK
Total:	215.0						

10. Eventually, claims 43A 190769-00, 43A 190771-00, and 43A 212636-00 were reconsolidated into Case 43A-0230-R-2022 for purposes of issuing this Master's Report.

PRINCIPLES AND 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.
3. Claim 43A 212636-00 is a late claim. The late claim issue remark decreed on the claim gave notice that the claim could be subordinate and therefore junior to certain permits and reservations of water. Any party asserting a superior claim to water

based on a permit or reservation was required to file an objection to that late claim during the Basin 43A objection period. Because no such objections were filed, this remark can now be removed from the claim.

4. The reservoir record issue remark decreed appearing on claim 43A 212636-00 is a notice-type issue remark. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. Claim 43A 190769-00 should be modified as shown in Finding of Fact No. 6.
2. Claim 43A 212636-00 should be modified as shown in Finding of Fact No. 9.
3. The Objections and Notice of Intent to Appear should be dismissed as resolved.
4. The issue remarks should be removed from claims 43A 190636-00 and 43A 212636-00.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

Anika M. Stern
Senior Water Master

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

Water Right Number: 43A 190769-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ARTHUN RANCH INC
2057 US HIGHWAY 89 N
WILLSALL, MT 59086 9553

Priority Date: OCTOBER 16, 1912

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.50 CFS

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: 103.00

Source Name UNNAMED TRIBUTARY OF KAVANAUGH CREEK

Source Type: GROUNDWATER

Source Name SPRING, UNNAMED TRIBUTARY OF KAVANAUGH CREEK

Source Type: GROUNDWATER

***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		SE	21	5N	9E	PARK

Source Name: UNNAMED TRIBUTARY OF KAVANAUGH CREEK

Period of Diversion: MARCH 15 TO OCTOBER 15

Diversion Means: HEADGATE

2		SE	21	5N	9E	PARK
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Source Name: SPRING, UNNAMED TRIBUTARY OF KAVANAUGH CREEK

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

Diversion Means: DIKE

3		NW	21	5N	9E	PARK
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Source Name: UNNAMED TRIBUTARY OF KAVANAUGH CREEK

Period of Diversion: MARCH 15 TO OCTOBER 15

Diversion Means: HEADGATE

4		SW	21	5N	9E	PARK
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Source Name: UNNAMED TRIBUTARY OF KAVANAUGH CREEK

Period of Diversion: MARCH 15 TO OCTOBER 15

Diversion Means: HEADGATE

***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	20.00		S2NE	21	5N	9E	PARK
2	81.00		SE	21	5N	9E	PARK
3	2.00		E2SENW	21	5N	9E	PARK
Total:	103.00						

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.

190769-00 190770-00 212636-00

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

Water Right Number: 43A 190771-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ARTHUN RANCH INC
2057 US HIGHWAY 89 N
WILSALL, MT 59086 9553

Priority Date: OCTOBER 16, 1912

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 170.54 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: 15.00

Source Name SPRING, UNNAMED TRIBUTARY OF KAVANAUGH CREEK

Source Type: GROUNDWATER

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		NWNE	21	5N	9E	PARK

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

Diversion Means: DIKE

***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	15.00		E2NE	21	5N	9E	PARK

Total: 15.00

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.

190765-00 190771-00 190772-00 216294-00

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

Water Right Number: 43A 212636-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: ARTHUN RANCH INC
2057 US HIGHWAY 89 N
WILSALL, MT 59086 9553

Priority Date: JUNE 1, 1959

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 10/06/1988 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 1,980.00 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 215.00

Source Name KAVANAUGH 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		SWNESE	16	5N	9E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM **Reservoir Name:** DICK ANDERSON RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNESE	16	5N	9E	PARK

Diversion to Reservoir: DIVERSION # 1

Dam Height: 31.30 FEET

Depth: 24.20 FEET

Surface Area: 7.00 ACRES

Capacity: 68.00 ACRE-FEET

SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

Period of Use: APRIL 1 TO OCTOBER 15

THIS RIGHT IS LIMITED TO HIGH OR FLOOD WATERS OF KAVANAUGH 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	2.00		SWSENE	21	5N	9E	PARK
2	8.00		E2SWNE	21	5N	9E	PARK
3	78.00		SE	21	5N	9E	PARK
4	48.00		NE	28	5N	9E	PARK
5	79.00		NE	28	5N	9E	PARK
Total:	<u>215.00</u>						

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.

190769-00 190770-00 212636-00

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43A TEMPORARY PRELIMINARY DECREE ISSUED 08/03/1988.