

Montana Water Court
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ELECTRONICALLY FILED

43A-0598-R-2022

July 20, 2022

Montana Water Court

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

* * * * *

CLAIMANT: Lower Shields River Canal Co.

CASE 43A-0598-R-2022
43A 110440-00

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, conclusion 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 claim 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-0598-R-2022 to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 110440-00 appeared in the Preliminary Decree for Basin 43A as an irrigation claim. Claim 43A 110440-00 received the following substantive issue remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE PARK COUNTY WATER RESOURCES SURVEY (1951) APPEARS TO INDICATE 1516.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

2. On January 10, 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 April 14, 2022, DNRC Water Resources Specialist Mary Crable filed her *Memorandum* in this matter. Ms. Crable's *Memo* states that she was contacted by Mike Dailey, a representative for Lower Shields River Canal Co., on January 18, 2022, and again on February 8, 2022, in person at the Bozeman Regional Office. In her *Memo*, Ms. Crable states that the claim was originally filed on December 1, 1981, by Robert "Bob" Eymen on behalf of the Lower Shields River Canal Company. The original filing claimed a place of use of 1,900 acres. Ms. Crable's *Memo* goes on to note that following claim examination, Mr. Eymen provided new place of use acreage that should have totaled 1,725 acres, however, due to a mathematical error, the acreage came out to 1,741 acres. Based on this mistaken value, Mr. Eymen then filed for an amendment of the place of use to match the value of 1,741 acres. Nevertheless, the mathematical error did not carry through to the abstract for the claim as it correctly reflects. 1,725 acres.

4. Further, the *Memo* states that current claims examination techniques utilize contact points to calculate a margin of error which, for this claim, was 1,795.01-1,654.98. Finally, the *Memo* notes that the DNRC does not consider this an issue under today's examination procedures and therefore, the DNRC recommends removal of the remark from the claim. Additionally, Ms. Crable states that Mr. Dailey agrees with the content of the *Memorandum*.

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 remarks placed on the above-captioned claim.

2. Based on the information contained in Ms. Crable's *Memo*, along with the stated agreement with said information provided by Mr. Dailey on behalf of Lower Shields River Canal Company, the elements of the claim should remain as they appear on 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 the water right claim reflecting the recommended changes is attached to this Report.

Eugene C. White
Water Master

Service via USPS Mail:

Lower Shields River Canal Co.
Michael C. Dailey
247 Shields River Rd E.
Livingston, MT 59047

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

Water Right Number: 43A 110440-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LOWER SHIELDS RIVER CANAL CO
MICHAEL C DAILEY
247 SHIELDS RIVER RD E
LIVINGSTON, MT 59047

Priority Date: JULY 25, 1904

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 64.38 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: 1,725.00

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		SESWSW	13	1N	9E	PARK

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: LOWER SHIELDS RIVER CANAL

Period of Use: MAY 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	168.00		S2	13	1N	9E	PARK
2	20.00		E2NW	24	1N	9E	PARK
3	91.00		NE	24	1N	9E	PARK
4	40.00		NESE	24	1N	9E	PARK
5	20.00		NWSE	24	1N	9E	PARK
6	62.00		W2SW	19	1N	10E	PARK
7	10.00		N2SESW	19	1N	10E	PARK
8	10.00		SWSESW	19	1N	10E	PARK
9	10.00		SESESW	19	1N	10E	PARK
10	75.00		W2SE	29	1N	10E	PARK
11	40.00		SESE	29	1N	10E	PARK
12	10.00		SWNESE	29	1N	10E	PARK

13	70.00	N2SW	29	1N	10E	PARK
14	5.00	NESWSW	29	1N	10E	PARK
15	20.00	N2SESW	29	1N	10E	PARK
16	10.00	SESESW	29	1N	10E	PARK
17	18.00	S2SWNW	29	1N	10E	PARK
18	9.00	SWSEW	29	1N	10E	PARK
19	16.00	SENE	30	1N	10E	PARK
20	4.00	NENWNE	4	1S	10E	PARK
21	9.00	SEWNE	4	1S	10E	PARK
22	8.00	NESWNE	4	1S	10E	PARK
23	3.00	E2E2NW	4	1S	10E	PARK
24	3.00	NWNWNE	4	1S	10E	PARK
25	30.00	SWSW	33	1N	10E	PARK
26	8.00	SWNWSW	33	1N	10E	PARK
27	9.00	SEWWSW	33	1N	10E	PARK
28	8.00	NWNESW	33	1N	10E	PARK
29	40.00	SWNW	33	1N	10E	PARK
30	10.00	SWNWNW	33	1N	10E	PARK
31	10.00	NWNWNW	33	1N	10E	PARK
32	9.00	SEWWNW	33	1N	10E	PARK
33	20.00	N2SEW	33	1N	10E	PARK
34	9.00	SESEW	33	1N	10E	PARK
35	8.00	SEWNE	33	1N	10E	PARK
36	20.00	W2NWN	33	1N	10E	PARK
37	40.00	SESE	4	1S	10E	PARK
38	40.00	NESE	4	1S	10E	PARK
39	10.00	NENWSE	4	1S	10E	PARK
40	10.00	NWNWSE	4	1S	10E	PARK
41	10.00	SEWSE	4	1S	10E	PARK
42	5.00	NENESW	4	1S	10E	PARK
43	55.00	E2	3	1S	10E	PARK
44	40.00	SESW	3	1S	10E	PARK
45	18.00	NESW	3	1S	10E	PARK
46	65.00	N2NW	10	1S	10E	PARK
47	33.00	SWNW	10	1S	10E	PARK
48	35.00	SEW	10	1S	10E	PARK
49	2.00	E2NWSW	10	1S	10E	PARK
50	35.00	NESW	10	1S	10E	PARK
51	28.00	SESW	10	1S	10E	PARK
52	42.00	W2NE	10	1S	10E	PARK
53	57.00	W2SE	10	1S	10E	PARK
54	40.00	NENE	32	1N	10E	PARK
55	10.00	NENWNE	32	1N	10E	PARK
56	5.00	NWNWNE	32	1N	10E	PARK
57	3.00	SWNWNE	32	1N	10E	PARK
58	18.00	N2SWNW	29	1N	10E	PARK
59	5.00	NWSEW	29	1N	10E	PARK

60	40.00	NENW	33	1N	10E	PARK
61	75.00	E2NE	33	1N	10E	PARK
62	20.00	S2NESW	33	1N	10E	PARK
63	30.00	SESW	33	1N	10E	PARK
64	16.00	E2SWSW	33	1N	10E	PARK
65	10.00	NENENE	9	1S	10E	PARK
66	8.00	SENENE	9	1S	10E	PARK
67	8.00	E2SENE	9	1S	10E	PARK
Total:						1725.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME MEANS OF DIVERSION AND PERIOD OF DIVERSION.

100824-00 110440-00