

Montana Water Court  
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43A-0325-R-2021

November 9, 2022

Montana Water Court

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

\* \* \* \* \*

CLAIMANTS: R. Richard Waddell

NOTICE OF INTENT TO APPEAR: Behnam-Gamble Trust

CASE 43A-0325-R-2021

43A 191807-00

43A 191808-00

**MASTER'S REPORT**

**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.

PROCEDURAL HISTORY

A Master's Report was issued in this on August 31, 2022. The Master's Report

indicated that nothing was filed in response to the July 26, 2022, Motion for Summary Judgment filed by R. Richard Waddell. The Behnam-Gamble Trust (the Trust) filed a Brief in Response to Motion for Summary Judgment, a Cross-Motion for Partial Summary Judgment, a supporting Brief, and an Affidavit on August 19, 2022. Due to her own oversight, this Master failed to consider the August 19, 2022 filings in the August 31, 2022 Master's Report. An Order Retracting the August 31, 2022 Master's Report was issued on August 31, 2022; *this Master's Report replaces the one previously issued.*

### FINDINGS OF FACT

1. The record owners of claims 43A 191807-00 and 43A 191808-00 are R. Richard Waddell (Waddell) and Sharon L. Waddell (Sharon L. Waddell).

2. On July 28, 2022, Sharon L. Waddell filed a withdrawal of interest in claims 43A 191807-00 and 43A 191808-00; a copy is attached. This is the last order Sharon L. Waddell will receive in this Case.

3. The following DNRC issue remarks were decreed on both claims:

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

THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 43A 191808-00, 43A 191807-00.

THE GALLATIN COUNTY WATER RESOURCES SURVEY ( 1953 ) APPEARS TO INDICATE 91.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

4. The Trust filed Notices of Intent to Appear for claims 43A 191807-00 and 43A 191808-00.

5. A Scheduling Order was issued on December 10, 2021.

6. On July 26, 2022, Waddell filed a Motion for Summary Judgment.

The Motion argued that the over-filed notice of appropriation issue remark decreed on the claims was added to the claims in error and that the claims are based on two different notices of appropriation. Claim 43A 191807-00 is based on the John G. Maddox May 15, 1900 appropriation, as was attached to the Statement of Claim. Claim 43A 191808-00 is based on the John G. Maddox June 10, 1893 appropriation, as was attached to the Statement of Claim.

The Motion also indicated the claims should be modified, consistent with the issue remarks:

Maximum Acres:		<del>120.00</del>	91.00
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	53.00	80.00	SE   10   2N   7E   GALLATIN
2	38.00	40.00	E2SW   10   2N   7E   GALLATIN
Total:	91.00	<del>120.00</del>	

7. On August 19, 2022, the Trust filed a Brief in Response to Motion for Summary Judgment, a Cross-Motion for Partial Summary Judgment (Cross-Motion), a supporting Brief, and an Affidavit.

8. The Trust argues that neither of the Maddox rights upon which claims 43A 191807-00 and 43A 191808-00 are based was included in the 1911 Shields River Decree, and Waddell should be required to produce evidence to support use rights post-dating the decree.

The Trust reasoned that the District Court was aware of the existence of the June 10, 1893 and May 15, 1900 Maddox Notices of Appropriation and did not include them in the 1911 Shields River Decree; consequently, the Trust argues the Maddox Notices of Appropriation are “defective as to establishing priority dates for the asserted claims.” *Behnam-Gamble Trust’s Brief in Response to Waddell’s Motion for Summary Judgment and Brief in Support of Cross-Motion for Partial Summary Judgment*, August 19, 2022, pg. 7. The Trust proposes that claims 43A 191807-00 and 43A 191808-00 be amended to use rights with priority dates post-dating the 1911 Shields River Decree, and that Waddell should be required to produce evidence supporting the priority date.

9. The Trust also argues that the place of use and flow rate issue remarks decreed on claims 43A 191807-00 and 43A 191808-00 present issues of material fact and summary judgment is not appropriate.

10. On September 13, 2022, Waddell responded to the Cross-Motion (Response), stating the Cross-Motion should be denied as the question of whether claims 43A 191807-00 and 43A 191808-00 pre-date the 1911 Shields River Decree is outside the Scope of the Trust’s Notice of Intent to Appear, and the Cross-Motion raises new

issues not previously raised in issue remarks or objections. Claims 43A 191807-00 and 43A 191808-00 were not decreed with issue remarks concerning the claims predating a decree. Further, the Trust did not object to claims 43A 191807-00 and 43A 191808-00.

11. On November 2, 2022, the parties filed a Notice of Settlement Agreement and Settlement Agreement (Settlement Agreement). The Settlement Agreement indicated the Trust would withdraw the Notices of Intent to Appear filed for claims 43A 191807-00 and 43A 191808-00 and the Cross-Motion. Additionally, pursuant to the Settlement Agreement, the Trust agreed it would not object to Motions to Amend filed by Waddell on November 2, 2022.

12. On November 2, 2022, the Trust filed its Withdrawal of Notice of Intent to Appear[s] and Withdrawal of [Cross] Motion for Summary Judgment (Withdrawals). The Withdrawals are consistent with the Settlement Agreement.

13. On November 2, 2022, Waddell filed a Motion to Amend many Basin 43A claims (Motion to Amend). The Motion proposed the following incidental rights commissioner remarks be added to claims 43A 191807-00 and 43A 191808-00:

THIS WATER RIGHT IS INCIDENTALLY USED FOR STOCK WATER.

THE INCIDENTAL USE OF THIS RIGHT FOR STOCK IS LIMITED TO WHEN WATER IS DIVERTED FROM THE POINT OF DIVERSION AND CONVEYED TO THE PLACE OF USE FOR IRRIGATION USE AND DOES NOT PROVIDE AN INDEPENDENT BASIS FOR A CALL ON OTHER WATER RIGHTS.

14. The Notices of Appropriation attached to the Statements of Claims for claims 43A 191807-00 and 43A 191808-00 reference the use of water for “irrigating and other purposes.” The Affidavit of Robert Richard Waddell was attached to the Motion to Amend and explained that “livestock have historically drunk from all the ditches on my property when water has been conveyed through those ditches to irrigate...”

#### PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim as well 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. Summary judgment is proper only when no genuine issues of material fact exist, and the moving party is entitled to judgment as a matter of law. *Watkins Trust v. Lacosta*, 2004 MT 144, ¶16, 321 Mont. 432, 92 P.3d 620 (citing M.R.Civ.P. 56(c)). To determine the existence or nonexistence of a genuine issue of material fact, the Court will look to the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits. *Lee v. USAA Cas. Ins. Co.*, 2001 MT 59, ¶ 24, 304 Mont. 356, 22 P.3d 631. All reasonable inferences that might be drawn from the offered evidence should be drawn in favor of the party opposing the summary judgment motion. *Lee*, ¶ 25.

4. The party seeking summary judgment has the burden of demonstrating an absence of genuine factual issues. *Id.* Proof is required to establish the absence of genuine issues of material fact; a party may not rely on the arguments of counsel. *Montana Metal Buildings, Inc. v. Shapiro*, 283 Mont. 471, 476, 942 P.2d 694, 697 (1997). Where the moving party can demonstrate that no genuine issue of material fact remains in dispute, the burden shifts to the party opposing the motion. *Lee*, ¶ 26. To raise a genuine issue of material fact, the party opposing summary judgment must “present material and substantial evidence, rather than merely conclusory or speculative statements.” *Id.*

5. Waddell agreed that the places of use/maximum acres for claims 43A 191807-00 and 43A 191808-00 should be modified consistent with the place of use issue remarks. By resolving the issue remarks, Waddell leaves no issue of material fact for the Trust to dispute regarding the place of use/maximum acres issue remarks.

6. Waddell showed the over-filed notice of appropriation issue remark was added to claims 43A 191807-00 and 43A 191808-00 erroneously. Both claims are supported by separate notices of appropriation. The Trust itself acknowledged the “claims were based on two different notices of appropriation.” Trust’s *Behnam-Gamble*

*Trust's Brief in Response to Waddell's Motion for Summary Judgment and Brief in Support of Cross-Motion for Partial Summary Judgement, August 19, 2022, pg. 8.*

7. The evidence supports the addition of incidental stock use commissioner remarks to claims 43A 191807-00 and 43A 191808-00. The remarks limit stock use to when water is otherwise being diverted for irrigation and does not increase the amount of water diverted. Adding a remark acknowledging a historical practice as part of the existing claims more fully defines the nature and extent of the claims. Section 85-2-234(6)(i), MCA.

### RECOMMENDATIONS

1. Sharon L. Waddell should be removed as a co-owner of claims 43A 191807-00 and 43A 191808-00.
2. The July 26, 2022 Motion for Summary Judgment should be granted.
3. Claims 43A 191807-00 and 43A 191808-00 should be modified as follows:

Maximum Acres:		<del>120.00</del>	91.00
Place of Use:			
ID	Acres	Govt Lot	Qtr Sec Sec Twp Rge County
1	53.00	80.00	SE 10 2N 7E GALLATIN
2	38.00	40.00	E2SW 10 2N 7E GALLATIN
Total:	91.00	120.00	

The commissioner remarks listed in Finding of Fact No. 13 should be added to claims 43A 191807-00 and 43A 191808-00.

4. The issue remarks should be removed from claims 43A 191807-00 and 43A 191808-00.
5. The August 19, 2022 Cross-Motion is dismissed as it has been withdrawn by the Trust.

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

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Anika M. Stern  
Senior Water Master

**Service Via Electronic Mail:**

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**(Last Order)**

**Service List Updated: 11/4/2022**

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

**Water Right Number:** 43A 191807-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** R RICHARD WADDELL  
600 SEITZ ROAD EAST  
WILSALL, MT 59086

**Priority Date:** MAY 15, 1900

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

THIS WATER RIGHT IS INCIDENTALLY USED FOR STOCK WATER.

**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:** 4 - MODERATELY LOW

**Maximum Acres:** 91.00

**Source Name:** UNNAMED TRIBUTARY OF CACHE 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		SWNWSE	15	2N	7E	GALLATIN

**Period of Diversion:** MAY 1 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Period of Use:** MAY 1 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	53.00		SE	10	2N	7E	GALLATIN
2	38.00		E2SW	10	2N	7E	GALLATIN
<b>Total:</b>	91.00						

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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.

191807-00      191808-00

THE INCIDENTAL USE OF THIS RIGHT FOR STOCK IS LIMITED TO WHEN WATER IS DIVERTED FROM THE POINT OF DIVERSION AND CONVEYED TO THE PLACE OF USE FOR IRRIGATION USE AND DOES NOT PROVIDE AN INDEPENDENT BASIS FOR A CALL ON OTHER WATER RIGHTS.



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

**Water Right Number:** 43A 191808-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** R RICHARD WADDELL  
600 SEITZ ROAD EAST  
WILSALL, MT 59086

**Priority Date:** JUNE 10, 1893

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION  
**Irrigation Type:** FLOOD  
THIS WATER RIGHT IS INCIDENTALLY USED FOR STOCK WATER.

**Flow Rate:** 1.25 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:** 91.00

**Source Name:** UNNAMED TRIBUTARY OF CACHE 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		SWNWSE	15	2N	7E	GALLATIN
<b>Period of Diversion:</b>	MAY 1 TO OCTOBER 15					
<b>Diversion Means:</b>	HEADGATE					
<b>Period of Use:</b>	MAY 1 TO OCTOBER 15					
<b>Place of Use:</b>						

<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	53.00		SE	10	2N	7E	GALLATIN
2	38.00		E2SW	10	2N	7E	GALLATIN
<b>Total:</b>	91.00						

**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.

191807-00      191808-00

THE INCIDENTAL USE OF THIS RIGHT FOR STOCK IS LIMITED TO WHEN WATER IS DIVERTED FROM THE POINT OF DIVERSION AND CONVEYED TO THE PLACE OF USE FOR IRRIGATION USE AND DOES NOT PROVIDE AN INDEPENDENT BASIS FOR A CALL ON OTHER WATER RIGHTS.

# REQUEST TO WITHDRAW STATEMENT OF CLAIM OR INTEREST IN STATEMENT OF CLAIM

I/We, Sharon Waddell hereby request the withdrawal or withdrawal of interest of  
Statement of Claim Number 43A 191807-00.

The reason for this request is:

☐ I/We have an existing right which is exempt from filing.

☐ This claim was for a use of water after July 1, 1973.

☐ I/We have no existing water right to claim.

☒ I/We have no interest in said Statement of Claim

☐ Other/Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Statement Signed by Owner:

I declare under penalty of perjury (§ 45-7-201, MCA) under the laws of the state of Montana that the foregoing content of this form is true and correct. I further declare that I have the authority to sign this document for myself as an individual or in representational capacity as an officer of a corporation, member of a limited liability company, general partner of a limited partnership, trustee for a trust or other official capacity for an entity as defined under "person" in §85-2-102, MCA. **(All current owners of the right as listed in the DNRC centralized record system are required to sign. Please attach DNRC's Withdrawal Agreement form if additional owner signatures are needed.)**

7-25-22 Sharon Waddell \_\_\_\_\_  
(Date Signed) (Signature of Claimant) (Office or Title)

\_\_\_\_\_  
(Date Signed) (Signature of Claimant) (Office or Title)

\_\_\_\_\_  
(Date Signed) (Signature of Claimant) (Office or Title)

\_\_\_\_\_  
(Date Signed) (Signature of Claimant) (Office or Title)

FILED  
JUL 28 2022  
Montana Water Court

# REQUEST TO WITHDRAW STATEMENT OF CLAIM OR INTEREST IN STATEMENT OF CLAIM

I/We, Sharon Madrell hereby request the withdrawal or withdrawal of interest of  
Statement of Claim Number 42A 191808-00.

The reason for this request is:

☐ I/We have an existing right which is exempt from filing.

☐ This claim was for a use of water after July 1, 1973.

☐ I/We have no existing water right to claim.

☒ I/We have no interest in said Statement of Claim

☐ Other/Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Statement Signed by Owner:

I declare under penalty of perjury (§ 45-7-201, MCA) under the laws of the state of Montana that the foregoing content of this form is true and correct. I further declare that I have the authority to sign this document for myself as an individual or in representational capacity as an officer of a corporation, member of a limited liability company, general partner of a limited partnership, trustee for a trust or other official capacity for an entity as defined under "person" in §85-2-102, MCA. **(All current owners of the right as listed in the DNRC centralized record system are required to sign. Please attach DNRC's Withdrawal Agreement form if additional owner signatures are needed.)**

7-25-22 Sharon Madrell  
(Date Signed) (Signature of Claimant)

\_\_\_\_\_  
(Office or Title)

\_\_\_\_\_  
(Date Signed) (Signature of Claimant)

\_\_\_\_\_  
(Office or Title)

\_\_\_\_\_  
(Date Signed) (Signature of Claimant)

\_\_\_\_\_  
(Office or Title)

\_\_\_\_\_  
(Date Signed) (Signature of Claimant)

\_\_\_\_\_  
(Office or Title)

FILED

JUL 28 2022

Montana Water Court