

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

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

* * * * *

CLAIMANT: CMR Ranch Owner, LLC

CASE 43A-6008-A-2023
43A 40431-00

OBJECTORS: Robert B. Boyd; John M. Melvin; Thomas K. Milkovich; Charles P. Gilbert; Shields Valley Land & Cattle LLC; Timothy R. Sundling; Peggy Sundling; Carlson Family Trust; Melissa P. Atkinson Revocable Trust; Queen Ranches Inc.

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. On December 21, 2023, CMR Ranch Owner, LLC filed a Motion to Amend claim 43A 40431-00. Claim 43A 40431-00 is a fish and wildlife claim for Rainbow Lake.¹ The motion requests modifications to the type of historical right, the volume, and the reservoir record. CMR was required to publish notice of the Motion to Amend pursuant to Section 85-2-233(6), MCA. Several objections were filed. A scheduling order was issued August 23, 2024.

2. On February 28, 2025, the parties filed a Stipulation and Agreement to resolve the issues in this case (Doc.² 40.00). The parties agree that claim 43A 40431-00 should be changed from a “decreed” right with a priority date of July 26, 1965 to a “use” right with a priority date of December 30, 1968. Additionally, the parties agree that the volume should be reduced from 250.00 acre-feet to 237.00 acre-feet and the reservoir record should be corrected as follows:

Dam Height:	25.00 FEET	40.00 FEET
Depth:	22.00 FEET	26.00 FEET
Surface Area:	21.00 ACRES	23.44 ACRES
Current Capacity	184.8 ACRE FEET	237.00 ACRE FEET

3. CMR included evidence and explanation for the requested modifications with its original Motion to Amend (Doc. 1.00). To support the requested modifications of type of historical right from “decreed” to “use” and the priority date from July 28, 1965 to December 30, 1968, CMR discusses the Decree that was attached to the Statement of Claim form. A portion of Park County District Court Case No. 12778 (“the Urschel Decree”) was attached to the Statement of Claim form for claim 43A 40431-00.

4. In that case, Charles F. Urschel was decreed an irrigation right to 250 AF of water from Hammond Creek with a priority date of July 28, 1965, which was the date the

¹ The abstract identifies the reservoir name as “Hammond Creek Reservoir,” but the parties have referred to it as “Rainbow Lake” throughout these proceedings.

² “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

complaint was filed. CMR explains that an irrigation right based off the decreed right was not filed in the adjudication and has therefore been forfeited. Claim 43A 40431-00 was filed for fish and wildlife purposes. Accordingly, the Urschel Decree, while not evidence of a decreed right for fish and wildlife purposes, is evidence of the date of first use of the fish and wildlife claim. The dam that created Rainbow Lake was constructed from 1965 to 1968. The Urschel Decree indicates that the dam was built by December 30, 1968: “on the 30th day of December, 1968, the plaintiff herein completed the construction of an earth filled dam measuring 750 feet in length and 40 feet in height over and across Hammond Creek....” The evidence supports amending claim 43A 40431-00 from a decreed right with a July 28, 1965, priority date, to a fish and wildlife use right with a December 30, 1968, priority date.

5. To support the requested modifications to the volume element and reservoir records, CMR explains that the information DNRC used to estimate the reservoir records was incorrect. There is a document in the claim file titled NATDAM Inventory of Dams, Inventory Data dated January 15, 1993. That document lists the length of the dam as 700 ft, and dam height as 25 ft, with a normal storage of 104 AF. It is unclear how the dimensions listed were obtained, but CMR asserts they are incorrect. It appears that the DNRC used the Inventory Data document to estimate the reservoir record that appeared on the abstract for claim 43A 40431-00.

6. CMR requests that the reservoir record and volume be corrected based on the 2024 Spillway Assessment Report which was filed with the Court as Additional Information on May 23, 2024 (Doc. 15.00). The Spillway Assessment Report was completed in connection with dam safety reporting requirements. The Spillway Assessment Report reflects a dam height of 40 ft; reservoir storage of 237 AF at the invert of the spillway; and a depth of 26 ft.

In the Motion to Amend, CMR indicates that “the capacity of Rainbow Lake has not changed since the Crazy Mountain Dam was built in 1968” (Doc. 1.00 at SOF 5). The evidence before the court supports CMR’s Motion to Amend the volume and reservoir record for claim 43A 40431-00. The volume and reservoir record should be amended pursuant to the terms of the Stipulation

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is *prima facie* proof of its content. § 85-2-227, MCA. This *prima facie* proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

The information before the court indicates that claim 43A 40431-00 is better described as a use right rather than a decreed right because the right described in the Urschel Decree is for irrigation while claim 43A 40431-00 is for fish and wildlife use. Because the Crazy Mountain Dam was not complete until December 30, 1968, the priority date should be modified accordingly.

The evidence provided shows that the reservoir record appearing on claim 43A 40431-00 was inaccurate and both the reservoir record and the volume should be corrected accordingly. A preponderance of the evidence supports correcting the reservoir records pursuant to the parties' stipulation.

2. The Water Court may correct a clerical mistake or a mistake arising from oversight or omission where one is found in a part of the record. Rule 60(a), M.R.Civ.P.

3. Settlement agreements are subject to review and approval of the Water Court. Rule 17(a), W.R.Adj.R. The settlement documentation in this Case should be accepted by the Court.

RECOMMENDATIONS

1. The February 3, 2025 Stipulation and Agreement should be accepted by the Court.

2. Claim 43A 40431-00 should be modified from a "decreed" right with a July 26, 1965, priority date to a "use" right with a December 30, 1968, priority date.

3. The volume and reservoir records for claim 43A 40431-00 should be corrected as provided above.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

John M. Melvin
PO Box 246
Clyde Park, MT 59018

Robert B. Boyd
PO Box 77
Clyde Park, MT 59018

Service via Electronic Mail:

Peter G. Scott
Attorney at Law
682 Ferguson #4
Bozeman, MT 59718
peter@scott-law.com
office@scott-law.com
Attorney for CMR Ranch Owner, LLC

Abigail R. Brown
Diana J. Abbott
Attorney at Law
Parsons Behle & Latimer
201 E. Broadway St.
PO Box 104
Helena, MT 59624
(406) 410-5050
AbbyBrown@parsonsbehle.com
Dabbott@parsonsbehle.com
ecf@parsonsbehle.com

Attorneys for Shields Valley Land & Cattle LLC, Charles P. Gilbert, and Thomas K. Milkovich, Melissa P. Atkinson Revocable Trust

Service via Electronic Mail:

Benjamin S. Sudduth
Sudduth Law, PLLC
682 South Ferguson Ave, Suite 4
PO Box 507
Bozeman, MT 59771-0507
(406) 272-2390
benjamin@sudduthlaw.com
Attorney for Timothy and Peggy Sundling

Jack Connors
Doney Crowley P.C.
PO Box 1185
Helena, MT 59624-1185
(406) 443-2211
jconnors@doneylaw.com
legalsec@doneylaw.com
Attorney for Carlson Family Trust

Michael P. Atkinson
1500 Park Centre
525 South Main
Tulsa, OK 74103-4524
(918) 582-8877
matkinson@abg-oklaw.com
Attorney for Melissa P. Atkinson Revocable Trust

Dana E. Pepper
Bina R. Peters (Last Order)
Evvind Ostrem
River and Range Law, PLLC
PO Box 477
Bozeman, MT 59771
(406) 599-7424
office@riverandrangelaw.com
dana@riverandrangelaw.com
bina@riverandrangelaw.com
evvind@riverandrangelaw.com
Attorneys for Queen Ranches, Inc.

Note: Service List Updated 4-15-2025

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

Water Right Number: **43A 40431-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: CMR RANCH OWNER LLC
%MIKE DUCUENNOIS
602 S FERGUSON AVE STE 2
BOZEMAN, MT 59718-6483

Priority Date: DECEMBER 30, 1968

Type of Historical Right: USE

Purpose (Use): FISH AND WILDLIFE

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

Volume: 237.00 AC-FT

Source Name: HAMMOND CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NESWSE	14	2N	10E	PARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Ditch Name: HAMMOND CREEK DAM

Reservoir: ONSTREAM **Reservoir Name:** HAMMOND CREEK RESERVOIR

Govt Lot	Qtr Sec	Sec	Twp	Rge	County
	NESWSE	14	2N	10E	PARK

Diversion to Reservoir: DIVERSION # 1

Dam Height: 40.00 FEET

Depth: 26.00 FEET

Surface Area: 23.44 ACRES

Capacity: 237.00 ACRE-FEET

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SE	14	2N	10E	PARK