

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

\*\*\*\*\*

CLAIMANT: CMR Ranch Owner, LLC

REQUIRED PARTIES: Melissa P. Atkinson Revocable Trust;  
Carlson Family Trust

**CASE 43A-6007-A-2023**

43A 20805-00

43A 40463-00

43A 40464-00

43A 40465-00

43A 193621-00

**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. On December 4, 2023, CMR Ranch Owner, LLC filed a Motion to Reopen Case and Correct or Amend Claims in Case 43A-0477-R-2020. (Doc.<sup>1</sup> 1.00). The Motion requests modifications to CMR's Rock Lake claims 43A 40463-00, 43A 40464-00, and 43A 40465-00.

2. CMR's Motion indicates that the reservoir record for claims 43A 40463-00, 43A 40464-00, and 43A 40465-00 contain significant errors that result in the capacity of the reservoir being identified as 228.00 Acre-Feet, when the accurate capacity is more than ten times that amount.

3. In addition to the three claims identified in CMR's Motion, there are two other water rights that incorporate Rock Lake. Those claims are 43A 20805-00 (owned by CMR), and 43A 193621-00 (owned by Melissa P. Atkinson Revocable Trust and Carlson Family Trust). Claims 43A 20805-00 and 43A 193621-00 were added to the case and Melissa P. Atkinson Revocable Trust and Carlson Family Trust were added as required parties.

4. The parties did not agree on whether the proposed modifications to the Rock Lake reservoir record may adversely affect the other water users, which would trigger the notice requirement of Section 85-2-233(6)(a), MCA. The parties briefed the issue, and an Order was issued on July 25, 2024 concluding that notice pursuant to Section 85-2-233(6)(a), MCA was not required. (Doc. 14.00). A deadline was set for the parties to attempt to resolve the reservoir record dispute through mutual agreement.

5. On October 23, 2024, Melissa P. Atkinson Revocable Trust withdrew its objection to CMR's Motion. (Doc. 19.00). On November 20, 2024, the remaining parties filed a Stipulation to resolve the issues in this case. (Doc. 21.00). In the Stipulation, the parties agree that the reservoir records appearing on the claims in this case are incorrect. They further agree that because all five claims represent appropriations from the same reservoir, the reservoir record for all five claims should contain the same information.

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<sup>1</sup> "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

The parties ask that the reservoir record for each claim be corrected pursuant to the evidence submitted in CMR's original request to correct the reservoir records:

<b>Reservoir:</b>	<b>ONSTREAM</b>	<b>Reservoir Name: ROCK LAKE</b>				
	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
		NESWSW	11	3N	11E	PARK
<b>Diversion to Reservoir:</b>	<b>DIVERSION # 1</b>					
<b>Dam Height:</b>	13.00 FEET					
<b>Depth:</b>	<del>40.00 FEET</del> 153.3 feet					
<b>Surface Area:</b>	<del>45.60 ACRES</del> 52.03 acres					
<b>Capacity:</b>	<del>228.00 ACRE-FEET</del> 2,585.00 acre feet					

Claims 43A 20805-00 and 43A 40465-00 contained a clerical error in the legal land description for the reservoir record. The legal land description should be corrected to the NESWSW of Section 11, 3N, 11E to reflect the accurate location of the dam. It appears the clerical error resulted from failure to correct the reservoir record based on the corrections to the point of diversion made during previous proceedings. The point of diversion for all five claims accurately reflects the NESWSW of Section 11, 3N, 11E and does not need correction.

6. To support of the requested modifications to the reservoir record, CMR provides a thorough explanation and extensive evidence in its original filing in this case. (Doc. 1.00).

CMR recounts the history of the Rock Lake reservoir and explains that the initial appropriations from Rock Lake were the subject of a 1911 District Court decree. Later, in the 1960s, additional work was done on the impoundment structure, creating more usable volume, and resulted in another District Court case that decreed additional volume with a 1965 priority date.

All five claims in this case claim a portion of Rock Lake storage. Four of those claims represent portions of Rock Lake storage that were decreed with a September 3, 1901 priority date in a 1911 District Court case. Those claims are 43A 20805-00, 43A 40464-00, 43A 40465-00, and 43A 193621-00.

CMR's claim 43A 40463-00 represents the additional usable storage created in the 1960s through the enlargement of the storage capacity of Rock Lake and the addition of a

tunnel. Claim 43A 40463-00 has a July 28, 1965, priority date as decreed in a 1969 District Court case.

As evidence in support of the requested modifications, CMR attaches filings and orders from prior District Court and Water Court cases, a 2013 Dam Hazard Determination Report, a 2013 Final Construction Report for Rock Lake Dam Rehabilitation, and diagrams from a United States Forest Service analysis of the size and capacity of Rock Lake. (Doc. 1.00).

7. The evidence provided establishes that DNRC erred when it estimated the capacity, maximum depth, and surface area of the reservoir resulting in inaccurate or incomplete reservoir records for claims 43A 20805-00, 43A 40463-00, 43A 40464-00, and 43A 40465-00.

Prior Court proceedings in Case 43A-0156-R-2020 incorrectly modified the reservoir record for claim 43A 193621-00 to reflect the volume of water that was usable as of 1901 rather than the overall capacity of the reservoir.

8. The errors appearing in the reservoir records for the claims in this case should be corrected. The information remarks appearing on some of the claims stating that the information in the reservoir records was estimated by the DNRC should be removed.

#### 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 evidence provided shows that the reservoir records appearing on the claims in this case were inaccurate. 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 reservoir records for the claims in this case 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 Electronic Mail:**

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*Attorney for Melissa P. Atkinson Revocable Trust*

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

**Water Right Number:** 43A 20805-00 STATEMENT OF CLAIM

**Version:** 7 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** SEPTEMBER 3, 1901

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

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

**Volume:** 64.43 AC-FT

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 535.00

**Source Name:** ROCK LAKE

**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		NESWSW	11	3N	11E	PARK

**\*Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

**Ditch Name:** ROCK LAKE DAM

WATER DIVERTED FROM ROCK LAKE IS CONVEYED TO ROCK CREEK WHICH IS USED AS A NATURAL CARRIER TO A SECONDARY POINT OF DIVERSION IN THE NESEW SECTION 8, T2N R11E, PARK COUNTY.

**Reservoir:** ONSTREAM **Reservoir Name:** ROCK LAKE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESWSW	11	3N	11E	PARK

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 13.00 FEET

**Depth:** 153.30 FEET

**Surface Area:** 52.03 ACRES

**Capacity:** 2,585.00 ACRE-FEET

**Period of Use:** APRIL 1 TO OCTOBER 31



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

**Water Right Number:** 43A 40463-00 STATEMENT OF CLAIM

**Version:** 6 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** JULY 28, 1965

**Type of Historical Right:** DECREED

**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:** 2,247.50 AC-FT

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 1,035.00

**\*Source Name:** ROCK LAKE

**Source Type:** SURFACE WATER

SOURCE IS THE ADDITIONAL STORAGE CREATED IN ROCK LAKE BY A TUNNEL DIVERSION.

**\*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		NESWSW	11	3N	11E	PARK

**\*Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

**Ditch Name:** ROCK LAKE DAM

WATER DIVERTED FROM ROCK LAKE IS CONVEYED TO ROCK CREEK WHICH IS USED AS A NATURAL CARRIER TO SECONDARY POINTS OF DIVERSION IN THE SESESE SECTION 7, T2N R11E (UPPER CRISWELL DITCH), AND THE SESESW SECTION 23, T2N R10E (LOWER CRISWELL DITCH).

**Reservoir:** ONSTREAM **Reservoir Name:** ROCK LAKE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESWSW	11	3N	11E	PARK

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 13.00 FEET

**Depth:** 153.30 FEET

**Surface Area:** 52.03 ACRES

**Capacity:** 2,585.00 ACRE-FEET

**Period of Use:** APRIL 1 TO NOVEMBER 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	10.00		S2S2SW	21	2N	10E	PARK
2	90.00		SE	21	2N	10E	PARK
3	210.00		S2	22	2N	10E	PARK
4	420.00			23	2N	10E	PARK
5	80.00		NW	24	2N	10E	PARK
6	10.00		NWNWSW	24	2N	10E	PARK
7	45.00		N2NW	28	2N	10E	PARK
8	30.00		N2N2NE	28	2N	10E	PARK
9	100.00		SW	21	2N	10E	PARK
10	40.00		SE	20	2N	10E	PARK
<b>Total:</b>	<u>1035.00</u>						

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

**Water Right Number:** 43A 40464-00 STATEMENT OF CLAIM

**Version:** 5 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** SEPTEMBER 3, 1901

**Type of Historical Right:** DECREED

**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:** 579.88 AC-FT

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 880.00

**Source Name:** ROCK LAKE

**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		NESWSW	11	3N	11E	PARK

**\*Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

**Ditch Name:** ROCK LAKE DAM

WATER DIVERTED FROM ROCK LAKE IS CONVEYED TO ROCK CREEK WHICH IS USED AS A NATURAL CARRIER TO SECONDARY POINTS OF DIVERSION IN THE SESESE OF SECTION 7, T2N R11E (UPPER CRISWELL DITCH) AND SESESW OF SECTION 23, T2N R10E (LOWER CRISWELL DITCH).

**Reservoir:** ONSTREAM **Reservoir Name:** ROCK LAKE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
		NESWSW	11	3N	11E	PARK

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 13.00 FEET

**Depth:** 153.30 FEET

**Surface Area:** 52.03 ACRES

**Capacity:** 2,585.00 ACRE-FEET

**Period of Use:** APRIL 1 TO NOVEMBER 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	10.00		S2S2SW	21	2N	10E	PARK
2	75.00		SE	21	2N	10E	PARK
3	210.00		S2	22	2N	10E	PARK
4	420.00			23	2N	10E	PARK
5	80.00		NW	24	2N	10E	PARK
6	10.00		NWNWSW	24	2N	10E	PARK
7	45.00		N2NW	28	2N	10E	PARK
8	30.00		N2N2NE	28	2N	10E	PARK
<b>Total:</b>	<u>880.00</u>						

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

**Water Right Number:** 43A 40465-00 STATEMENT OF CLAIM  
**Version:** 5 -- POST DECREE  
**Status:** ACTIVE

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

**Priority Date:** SEPTEMBER 3, 1901

**Type of Historical Right:** DECREED

**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:** 64.43 AC-FT

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 880.00

**Source Name:** ROCK LAKE

**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		NESWSW	11	3N	11E	PARK

**\*Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

**Ditch Name:** ROCK LAKE DAM

WATER DIVERTED FROM ROCK LAKE IS CONVEYED TO ROCK CREEK WHICH IS USED AS A NATURAL CARRIER TO SECONDARY POINTS OF DIVERSION IN THE SESESE OF SECTION 7, T12N R11E (UPPER CRISWELL DITCH) AND SESESW OF SECTION 23, T2N R10E (LOWER CRISWELL DITCH).

**Reservoir:** ONSTREAM **Reservoir Name:** ROCK LAKE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESWSW	11	3N	11E	PARK

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 13.00 FEET

**Depth:** 153.30 FEET

**Surface Area:** 52.03 ACRES

**Capacity:** 2,585.00 ACRE-FEET

**Period of Use:** APRIL 1 TO NOVEMBER 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	10.00		SE	21	2N	10E	PARK
2	75.00		SE	21	2N	10E	PARK
3	210.00		S2	22	2N	10E	PARK
4	420.00			23	2N	10E	PARK
5	80.00		NW	24	2N	10E	PARK
6	10.00		NWNWSW	24	2N	10E	PARK
7	45.00		N2NW	28	2N	10E	PARK
8	30.00		N2N2NE	28	2N	10E	PARK
<b>Total:</b>	<u>880.00</u>						

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

**Water Right Number:** 43A 193621-00 STATEMENT OF CLAIM

**Version:** 5 -- POST DECREE

**Status:** ACTIVE

**Owners:** ATKINSON, MELISSA P REVOCABLE TRUST  
ATKINSON MELISSA P & MICHAEL P TRUSTEES  
PO BOX 207  
CLYDE PARK, MT 59018-0207

CARLSON FAMILY TRUST  
24 WENTWORTH LN  
NOVATO, CA 94949-5845

\* OWNERSHIP OF WATER RIGHT CHANGED BY ORDER OF THE WATER COURT DURING ADJUDICATION OF THE TEMPORARY PRELIMINARY.

**\*Priority Date:** SEPTEMBER 3, 1901

**\*Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

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

**\*Volume:** 128.86 AC-FT

**Climatic Area:** 3 - MODERATE

**\*Maximum Acres:** 155.00

**Source Name:** ROCK LAKE

**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		NESWSW	11	3N	11E	PARK

**\*Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

**Ditch Name:** ROCK LAKE DAM

WATER DIVERTED FROM ROCK LAKE IS CONVEYED TO ROCK CREEK WHICH IS USED AS A NATURAL CARRIER TO A SECONDARY POINT OF DIVERSION IN THE SENENE SEC 29 TWP 2N RGE 10E PARK COUNTY.

**Reservoir:** ONSTREAM **Reservoir Name:** ROCK LAKE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESWSW	11	3N	11E	PARK

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 13.00 FEET

**Depth:** 153.30 FEET

**Surface Area:** 52.03 ACRES

**Capacity:** 2,585.00 ACRE-FEET

**\*Period of Use:** APRIL 1 TO SEPTEMBER 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	42.00		N2NW	29	2N	10E	PARK
2	68.00		S2SW	20	2N	10E	PARK
3	45.00		S2SE	19	2N	10E	PARK
<b>Total:</b>	<u>155.00</u>						