

Montana Water Court
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ELECTRONICALLY FILED

43A-0603-R-2022

September 7, 2022

Montana Water Court

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

* * * * *

CLAIMANT: Amber Ranch, LLC

OBJECTORS: Roger A. Enrico; Rosemary Enrico

CASE 43A-0603-R-2022
43A 107171-00

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

The above-captioned claim appeared in the Preliminary Decree for Basin 43A. Claim 43A 107171-00 received an objection from Roger A. and Rosemary Enrico and a counterobjection from T&P Ranch, LLC and also received issue remarks from the DNRC. The claim was consolidated into Case 43A-0603-R-2022 to resolve the Objection, Counterobjection, and issue remarks.

FINDINGS OF FACT

1. A Status Conference for Case 43A-0603-R-2022 took place on March 2, 2022, by telephone conference call. Water Master Eugene C. White presided; Abby Brown appeared on behalf of Counterobjector T&P Ranch, LLC; Suzanne Nellen and Darrel Shehan were present on behalf of Objectors Roger and Rosemary Enrico; and Ross Keough was present on behalf of Claimant Miles Creek Ranch, LLC.

2. During the conference, Ms. Brown alerted the Court that T&P Ranch, LLC had previously withdrawn their counterobjection on March 1, 2022. Based on the withdrawal of the counterobjection, T&P Ranch, LLC was removed from the case and service list. Mr. Keough and Ms. Nellen discussed the Enrico's remaining objection and the fact that settlement in this case could hinge upon settlement of objections in case 43A 0546-R-2020. The parties agreed to a 90-day filing deadline to file settlement documents or a status report.

3. Claim 43A 107171-00 received substantive issue remarks from the DNRC stating:

THE PARK COUNTY WATER RESOURCES SURVEY (1951) APPEARS TO INDICATE 30.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

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

4. On April 8, 2022, claimant Miles Creek Ranch, LLC filed a *Notice of Resolution and Motion to Amend to Resolve Issue Remarks*. The *Resolution* states that

reducing the place of use element for claim 43A 107171-00 from 72 to 30 acres would resolve the issue remarks present on the claim. Further, the *Resolution* denotes that the Enricos are obligated to withdraw their objections in the instant case in order to resolve objections to certain claims in Case 43A-0546-R-2020. Finally, the *Resolution* states that the motion is unopposed by the Objectors.

5. Claim 43A 107171-00 also received a notice-type issue remark denoting a modification made to the point of diversion during the DNRC's reexamination of claims. No objections to the point of diversion were filed.

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.

8. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

CONCLUSIONS OF LAW

1. Pursuant to Rule 17(c), W.R.Adj.R., the proposed modification to the acres place of use constitutes a reduction of the element such that the Court may accept the modification to resolve the issue remarks without further review. Based on the parties' previous agreement in Case 43A-0546-R-2020, the Enrico's Objection should be considered withdrawn and resolved.

2. The notice-type issue remark appearing on claim 43A 107171-00 served its notice purpose and should be removed from the claim.

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

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

Water Right Number: 43A 107171-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MILES CREEK RANCH, LLC
%FIDUCIARY COUNSELLING INC
30 SEVENTH ST E STE 2000
SAINT PAUL, MN 55101

Priority Date: JUNE 6, 1901

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.88 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: 30.00

Source Name MILES 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		SWNWNE	7	1N	8E	PARK

Period of Diversion: APRIL 15 TO SEPTEMBER 30

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO SEPTEMBER 30

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	30.00		SE	6	1N	8E	PARK

Total: 30.00