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ELECTRONICALLY FILED

43A-0607-R-2022

July 6, 2022

Montana Water Court

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

\* \* \* \* \*

CLAIMANT: State of Montana Department of  
Transportation

CASE 43A-607-R-2022  
43A 30046602

**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**

Claim 43A 30046602 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 review of the claims.

The claim was consolidated into Case 43A-0607-R-2022 to resolve the issue remarks.

### FINDINGS OF FACT

1. Claim 43A 30046602 appeared in the Preliminary Decree as an irrigation claim. Claim 43A 30046602 received the following issue remark:

AN AMENDMENT WAS SUBMITTED ON 4/19/2018 REQUESTING TO AMEND THE POINT OF DIVERSION. THE AMENDMENT WAS NOT PROCESSED AS THIS ELEMENT WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS.

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. AVAILABLE INFORMATION INDICATED THAT THE CORRECT LEGAL DESCRIPTION IS SWSESW SEC 21 TWP 4N RGE 9E, PARK COUNTY.

2. The proposed modification contained in the amendment to the legal land description for the point of diversion for claim 43A 30046602 matches the legal land description referenced in the issue remark. On February 18, 2022, the Court ordered Claimant to provide information or evidence, if necessary, to dispute proposed modification to the legal land description of the point of diversion. Nothing was filed by the ordered deadline.

### 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 issue remark overcomes the prima facie status of claim 43A 30046602. Because the Claimant did not provide information or evidence disputing the point of diversion, and the issue remark references the legal land description requested in the amendment filed for the point of diversion, the point of diversion should be modified as described in Finding of Fact No. 1. The issue remarks 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.

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Eugene C. White  
Water Master

**Service via USPS Mail:**

State of Montana Department of Transportation  
Real Estate Services Section  
PO Box 201001  
Helena, MT 59620-1001

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

**Water Right Number:** 43A 30046602 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MONTANA, STATE OF DEPT OF TRANSPORTATION  
REAL ESTATE SERVICES SECTION  
PO BOX 201001  
HELENA, MT 59620 1001

**Priority Date:** JUNE 9, 1890

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 2.50 CFS

THIS CLAIM AND CLAIM 6297-00 ALTERNATE THE USE OF WATER DIVERTED UNDER THIS HISTORICAL RIGHT. THE TOTAL FLOW RATE DIVERTED AT ANY ONE TIME UNDER THE TWO CLAIMS SHALL NOT EXCEED 2.5 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:** 34.30

**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		SWSESW	21	4N	9E	PARK

**Period of Diversion:** APRIL 15 TO SEPTEMBER 20

**Diversion Means:** HEADGATE

**Ditch Name:** HIGHWAY DITCH

**Period of Use:** APRIL 15 TO SEPTEMBER 20

**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	34.30		NW	32	4N	9E	PARK

**Total:** 34.30

**Remarks:**

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 43A 6297-00.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43A TEMPORARY DECREE ISSUED 08/03/1988.