

Montana Water Court
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FILED
04/09/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0010-R-2024
Block, Nathaniel
2.00

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
JUDITH RIVER BASIN (41S)
PRELIMINARY DECREE

CLAIMANTS: Greg Beers; Lois A. Petersen

OBJECTOR: Bruce F. Hinkley

NOTICE OF INTENT TO APPEAR: Bruce F. Hinkley

CASE 41S-0010-R-2024
41S 131799-00

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

Claim 41S 131799-00 appeared in the Preliminary Decree for the Judith River (Basin 41S) and received an objection and notice of intent to appear from Bruce Hinkley. The claim was decreed with the following issue remarks:

SOURCE NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM. THE POINT OF DIVERSION MAY BE INCORRECT. THE LOCATION OF THE PUMP CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

On March 19, 2024, a status conference was held. Greg Beers, Lois Petersen and Bruce Hinkley were in attendance. The parties agreed that the legal land description for the point of diversion and place of use should be modified to the NESWNE of S1 T16N R19E.

The parties further stated that the volume should be increased to 2.5 AC-FT and the maximum acres should be increased to 1 acre to reflect historical use.

FINDINGS OF FACT

1. The point of diversion and place of use should be modified to the NESWNE of S1 T16N R19E. Modification of the point of diversion resolves the point of diversion issue remark.
2. Pursuant to their attestation at the status conference, volume should be modified to 2.5 AC-FT and the maximum acres should be modified to 1 acre.

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(13), MCA.
2. A properly filed Statement of Claim for Existing Water 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. 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.

3. Section 3-7-224, MCA the Water Court is directed to conduct hearings in the same manner as for other civil actions. The Water Court applies the Montana Rules of Civil Procedure (M.R.Civ.P.), the Montana Rules of Evidence (M.R.Evid.) and the Montana Uniform District Court Rules. This Master considers documents (including objections) filed with the Court as “other paper” under M.R.Civ.P. Rule 11(b)(3) which certifies that to the best of the parties knowledge the factual contentions contained within the Statement are supported by evidence.

4. The law disregards trifles. § 1-3-224, MCA.

CONCLUSIONS OF LAW

1. The point of diversion and place of use of claim 41S 131799-00 should be modified to NESWNE of S1 T16N R19E. The volume should be modified to 2.5 acre-feet and the maximum acres should be modified to 1 acre.

2. Adoption of the modifications resolves the ‘point of diversion’ issue remark on the claim. The remaining remark should be removed as it has served its notice purpose and no objection was filed to source.

RECOMMENDATIONS

1. The issue remarks should be removed from the claim for the reasons discussed above and the point of diversion and place of use 41S 131799-00 should be modified to NESWNE of S1 T16N R19E. The volume should be modified to 2.5 acre-feet and the maximum acres should be modified to 1 acre.

A Post Decree Abstract of Water Right Claim is attached to this Master’s Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Greg Beers
Lois A. Petersen
PO Box 31514
Billings, MT 59107

Bruce F. Hinkley
7230 Maiden Road
Lewistown, MT 59457-8060

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S**

Water Right Number: 41S 131799-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GREG BEERS
PO BOX 31514
BILLINGS, MT 59107

LOIS A PETERSEN
PO BOX 31514
BILLINGS, MT 59107

Priority Date: DECEMBER 31, 1935

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 25.00 GPM

Volume: 2.50 AC-FT

Households: 1

Maximum Acres: 1.00

***Source Name:** UNNAMED TRIBUTARY OF WARM SPRING CREEK

Source Type: SURFACE WATER
ALSO KNOWN AS PETERSON CREEK

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		NESWNE	1	16N	19E	FERGUS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

Period of Use: JANUARY 1 TO DECEMBER 31

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	1.00		NESWNE	1	16N	19E	FERGUS

Total: 1.00