

Montana Water Court
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FILED
04/11/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0027-R-2024
Block, Nathaniel
1.00

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

CLAIMANT: Echo Canyon Ranch LLC

OBJECTOR: Cynthia A. Musselman

CASE 41S-0027-R-2024
41S 104288-00

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 104288-00 appeared in the Preliminary Decree for the Judith River (Basin 41S) and was decreed with the following issue remark:

THE CLAIMED FLOW RATE OR VOLUME MAY BE INCORRECT. BASED ON THE FLOW RATE AND PERIOD OF USE, THE SYSTEM WOULD HAVE TO RUN 12.4 HOURS PER DAY TO DELIVER THE CLAIMED VOLUME. NO INFORMATION EXISTS IN THE CLAIM FILE TO CONFIRM THESE FIGURES.

Cynthia Musselman filed an objection to the claim stating that the issue remark should be removed as the claimed flow and volume was “historically correct” and that the well had been used as claimed.

The statement of claim originally claimed 6 gallons per minute and 5 acre-feet, which is how the claim appeared in the Preliminary Decree.

Claim 41S 104288-00 is hereby consolidated into Water Court Case 41S-0027-R-2024 for the purposes of this Master’s Report.

FINDINGS OF FACT

1. The issue remark fails to overcome the prima facie status of the claim.
2. The issue remark should be removed from the claim.

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.

CONCLUSIONS OF LAW

1. The claim should be decreed with the elements as they appeared in the Preliminary Decree.
2. The issue remark on the claim should be removed as discussed above.

RECOMMENDATIONS

1. The issue remark should be removed from the claim for the reasons discussed above and the claim should be decreed with the elements as they appeared in the Preliminary Decree.

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:

Echo Canyon Ranch LLC
9635 Schlagel St.
Longmont, CO 80503-8556

Cynthia A. Musselman
9635 Schlagel St.
Longmont, CO 80503-8556

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

Water Right Number: 41S 104288-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ECHO CANYON RANCH LLC
9635 SCHLAGEL ST
LONGMONT, CO 80503-8556

Priority Date: NOVEMBER 10, 1961

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 6.00 GPM

Volume: 5.00 AC-FT

Households: 1

Maximum Acres: 2.00

Source Name: GROUNDWATER

Source Type: GROUNDWATER

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		NESESW	3	16N	19E	FERGUS

Period of Diversion: JULY 1 TO JUNE 30

Diversion Means: WELL

Period of Use: JULY 1 TO JUNE 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	2.00		NESESW	3	16N	19E	FERGUS

Total: 2.00