

Montana Water Court
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Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
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IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
KOOTENAI RIVER BASIN (76D)
PRELIMINARY DECREE

CLAIMANTS: Lisa L. Darr; Brian Gorman; Karla Gorman;
Blarney Ranch LLC

CASE 76D-6004-A-2024
76D 143725-00
76D 143726-00

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

Statement of the case

Brian Gorman, co-claimant and owner on behalf of Blarney Ranch LLC, filed a motion to amend the point of diversion and means of diversion for irrigation claims 76D 143725-00 and 76D 143726-00. The court set a filing deadline for: 1) Mr. Gorman to file the pre-July 1, 1973 evidence discussed in the motion to amend, 2) Mr. Gorman to provide the additional legal land descriptions for the springs and means of conveyance from the springs to the source, Brimstone Creek, and 3) co-claimants to agree with the proposed amendments. The order included the following language, "Failure of co-claimants to file comments with the court shall be deemed their agreement with the motion to amend." None of the co-claimants filed any comments by the deadline.

Issue

The points of diversion and means of diversion identified by the abstracts for irrigation claims 76D 143725-00 and 76D 143726-00 are:

***Point of Diversion and Means of Diversion:**

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|---|-----------------|------------|------------|------------|------------|---------------|
| 1 | | NWSWNW | 17 | 34N | 25W | LINCOLN |
| Period of Diversion: APRIL 1 TO OCTOBER 31 | | | | | | |
| Diversion Means: HEADGATE | | | | | | |
| Ditch Name: PRICE DITCH | | | | | | |
| 2 | | SESWNW | 17 | 34N | 25W | LINCOLN |
| Period of Diversion: APRIL 1 TO OCTOBER 31 | | | | | | |
| Diversion Means: HEADGATE | | | | | | |
| Ditch Name: PRICE DITCH | | | | | | |
| 3 | | NENWSW | 17 | 34N | 25W | LINCOLN |
| Period of Diversion: APRIL 1 TO OCTOBER 31 | | | | | | |
| Diversion Means: HEADGATE | | | | | | |
| Ditch Name: PRICE DITCH | | | | | | |

Blarney Ranch LLC contends the historically accurate points of diversion for irrigation claims 76D 143725-00 and 76D 143726-00 should include two springs in the SENE of Section 18, Township 34 North, Range 25 West, and three springs located in the NWSW, NESW, and SWNW of Section 17, Township 34 North, Range 25 West. Blarney Ranch

LLC contends the historically accurate means of diversion for the springs to Brimstone Creek are ditches.

Should Blarney Ranch LLC's motion to amend irrigation claims 76D 143725-00 and 76D 143726-00 be granted?

Findings of fact

1. A preponderance of evidence establishes the historical point of diversion for irrigation claims 76D 143725-00 and 76D 143726-00 should include five springs, their flow conveyed to the source Brimstone Creek by ditch year-round.

2. The additional legal land descriptions for the five springs are for two springs both in the SENE of Section 18, Township 34 North, Range 25 West, and three springs, one each located in the NWSW, NESW, and SWNW of Section 17, Township 34 North, Range 25 West.

3. The addition of the springs to the point of diversion results in the addition of a source name - Spring, Unnamed Tributary of Brimstone Creek.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. Prima facie proof may be overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. 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 a "modest standard" and is evidence that demonstrates the fact to be proved is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. The Montana Water Court has jurisdiction to review a motion to amend

pursuant to Section 85-2-233(6), MCA.

4. If an element of a claim did not appear on the objection list for a basin, and a motion to amend that element is filed with the Court, notice by publication of the amendment is required if there is the possibility of adverse affect to other water users. Section 85-2-233(6), MCA.

5. Rule 15 M.R.Civ.P. restricts the scope of an amendment to the conduct, transaction, or occurrence set forth in the original pleading - the “same set of operative facts as contained in the original pleading.” *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-423, 708 P.2d 1014, 1017 (1985). The requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15, 504 P.2d 277, 281 (1972).

6. The party seeking to amend a water right claim has the burden to show, by a preponderance of the evidence, that the claim elements they challenge do not accurately reflect the beneficial use of the water rights as they existed prior to July 1, 1973. *Nelson v. Brooks*, 2014 MT 120, ¶34, 375 Mont. 86, 329 P.3d 558; Rule 19, W.R.Adj.R.

Analysis

Blarney Ranch LLC’s motion to amend irrigation claims 76D 143725-00 and 76D 143726-00 asserts the point of diversion and means of diversion identified by the claims should include 5 artesian springs all located on Blarney Ranch LLC’s property.

Mr. Gorman’s January 24, 2024 motion to amend states “the five (5) springs have operated as a ‘single system’ in conjunction with Brimstone Creek for well over 128 years.” Mr. Gorman explains the Fortin Family originally homesteaded the ranch in 1896. The youngest son, Henry Oscar Fortin, wrote a memoir in the mid-1950s “detailing pioneer and homestead life on the ranch from his birth in 1900, until the family finally sold the ranch in 1949.” Mr. Fortin discusses the springs identified by the motion to amend throughout his memoir. The motion to amend and Mr. Gorman’s discussion of evidence in support of the motion to amend may be viewed on the court’s case management system, FullCourt Enterprise, at document sequence 1.00.

The following evidence supports the proposed amendments:

- Copies of the Henry Oscar Fortin memoir excerpts supporting the following statements in the motion to amend. “There is dozens of references to ‘The Springs’ on the ranch throughout the entire memoir, many of which detail how they had to be fenced to keep livestock out, how cold and clear the water was, and how peculiar it was to have such high-flowing water, in five (5) locations, just ‘erupting from the ground.’ Throughout the memoir, the ‘spring ditches’ are mentioned numerous times, suggesting the springs were routed to converge with Brimstone Creek, or were at least channelized to increase efficiency of flow to Brimstone Creek to facilitate beneficial use (aka irrigation) on the ranch. There is also an entire chapter dedicated to the springs, simply titled ‘The Springs.’ The very first paragraph of this chapter reads, ‘The spring itself was a sight to behold. It was a rather large one, about the size of the average parlor. Water gushed up and during the summer or winter, rainy or wet seasons, its supply apparently never diminished.’ The specific spring being discussed in the first paragraph is the largest of the springs, which is currently near the barn on the ranch, just southeast of the main driveway, and flows directly into Brimstone Creek within 50 yards of emerging from the ground.”
- 1962 aerial imagery from the USGS.

This evidence may be viewed on the court’s case management system, FullCourt Enterprise, at document sequence 3.00.

The changes requested in the motion to amend arise out of the same conduct, transaction, or occurrence specified on the original statements of claim and are based on the same operative facts specified in the statements of claim. The motion to amend and evidence in support of the motion to amend are sufficient to support the historical accuracy of the amended point of diversion and means of diversion for the additional points of diversion proposed by the amendment, thereby overcoming the prima facie proof afforded the point of diversion identified by the statements of claim. Although not specifically mentioned by the motion to amend, evidence in support of the motion to

amend also supports that each artesian spring should identify a year-round period of diversion, and an additional source name, Spring, Unnamed Tributary of Brimstone Creek, should be added reflecting the addition of the springs to the point of diversion.

No intervening pre- or post-July 1, 1973 water users exist between the current and proposed additional point of diversion legal land descriptions on Brimstone Creek or for the springs. No other water users identify these springs as a source. Due to a quantified flow rate and volume identified by each claim, the year-round period of diversion for each spring does not increase the amount of water appropriated. The amendments do not have the possibility to adversely affect other water users. No public notice of the amendments is required.

Conclusion of law

Blarney Ranch LLC's motion to amend irrigation claims 76D 143725-00 and 76D 143726-00 should be granted.

Recommendations

To accurately reflect historical use, the source, point of diversion, and means of diversion for irrigation claims 76D 143725-00 and 76D 143726-00 should be amended as depicted by the modified abstracts attached to this report.

Post Decree Abstracts of Water Right Claim accompany this report to confirm implementation of the recommendations in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Lisa L Darr
PO Box 183
Trego MT 59934-0183

Blarney Ranch LLC
PO Box 492
Trego MT 59934-0492

Karla Gorman
Brian Gorman
PO Box 492
Trego MT 59934-0492
~~191 Ant Flat Rd~~
~~Trego MT 59934~~
(Returned Mail Received 3/6/2024)

Service List Updated 4/25/2024

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 143725-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:

LISA L DARR
PO BOX 183
TREGO, MT 59934-0183

BRIAN GORMAN
191 ANT FLAT RD
TREGO, MT 59934

KARLA GORMAN
191 ANT FLAT RD
TREGO, MT 59934

BLARNEY RANCH LLC
PO BOX 492
TREGO, MT 59934-0492

Priority Date: MAY 9, 1932

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 3.00 CFS

Volume: 275.00 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 189.00

Source Name: BRIMSTONE CREEK

Source Type: SURFACE WATER

Source Name: SPRING, UNNAMED TRIBUTARY OF BRIMSTONE CREEK

Source Type: SURFACE WATER

THE FIVE SPRINGS IDENTIFIED AS SECONDARY POINTS OF DIVERSION FLOW INTO BRIMSTONE 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 | | NWSWNW | 17 | 34N | 25W | LINCOLN |

Source Name: BRIMSTONE CREEK

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: PRICE DITCH

| | | | | | | |
|---|--|--------|----|-----|-----|---------|
| 2 | | SESWNW | 17 | 34N | 25W | LINCOLN |
|---|--|--------|----|-----|-----|---------|

Source Name: BRIMSTONE CREEK
Period of Diversion: APRIL 1 TO OCTOBER 31
Diversion Means: HEADGATE
Ditch Name: PRICE DITCH

3 NENWSW 17 34N 25W LINCOLN

Source Name: BRIMSTONE CREEK
Period of Diversion: APRIL 1 TO OCTOBER 31
Diversion Means: HEADGATE
Ditch Name: PRICE DITCH

4 - SECONDARY SWNW 17 34N 25W LINCOLN

Source Name: SPRING, UNNAMED TRIBUTARY OF BRIMSTONE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DITCH

5 - SECONDARY NESW 17 34N 25W LINCOLN

Source Name: SPRING, UNNAMED TRIBUTARY OF BRIMSTONE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DITCH

6 - SECONDARY NWSW 17 34N 25W LINCOLN

Source Name: SPRING, UNNAMED TRIBUTARY OF BRIMSTONE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DITCH

7 - SECONDARY SENE 18 34N 25W LINCOLN

Source Name: BRIMSTONE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DITCH

8 - SECONDARY SENE 18 34N 25W LINCOLN

Source Name: SPRING, UNNAMED TRIBUTARY OF BRIMSTONE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DITCH

Period of Use: APRIL 1 TO OCTOBER 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 | 14.00 | | SESE | 7 | 34N | 25W | LINCOLN |
| 2 | 10.00 | | SWSWSW | 8 | 34N | 25W | LINCOLN |
| 3 | 57.00 | | W2NW | 17 | 34N | 25W | LINCOLN |
| 4 | 50.00 | | N2SW | 17 | 34N | 25W | LINCOLN |
| 5 | 58.00 | | E2NE | 18 | 34N | 25W | LINCOLN |
| Total: | 189.00 | | | | | | |

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

143725-00

143726-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 143726-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: LISA L DARR
PO BOX 183
TREGO, MT 59934-0183

BRIAN GORMAN
191 ANT FLAT RD
TREGO, MT 59934

KARLA GORMAN
191 ANT FLAT RD
TREGO, MT 59934

BLARNEY RANCH LLC
PO BOX 492
TREGO, MT 59934-0492

Priority Date: SEPTEMBER 11, 1931

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 2.00 CFS

Volume: 200.00 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 189.00

Source Name: BRIMSTONE CREEK

Source Type: SURFACE WATER

Source Name: SPRING, UNNAMED TRIBUTARY OF BRIMSTONE CREEK

Source Type: SURFACE WATER

THE FIVE SPRINGS IDENTIFIED AS SECONDARY POINTS OF DIVERSION FLOW INTO BRIMSTONE 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 | | NWSWNW | 17 | 34N | 25W | LINCOLN |
| Source Name: BRIMSTONE CREEK | | | | | | |
| Period of Diversion: APRIL 1 TO OCTOBER 31 | | | | | | |
| Diversion Means: HEADGATE | | | | | | |
| Ditch Name: PRICE DITCH | | | | | | |
| 2 | | SESWNW | 17 | 34N | 25W | LINCOLN |

Source Name: BRIMSTONE CREEK
Period of Diversion: APRIL 1 TO OCTOBER 31
Diversion Means: HEADGATE
Ditch Name: PRICE DITCH

3 NENWSW 17 34N 25W LINCOLN

Source Name: BRIMSTONE CREEK
Period of Diversion: APRIL 1 TO OCTOBER 31
Diversion Means: HEADGATE
Ditch Name: PRICE DITCH

4 - SECONDARY SWNW 17 34N 25W LINCOLN

Source Name: SPRING, UNNAMED TRIBUTARY OF BRIMSTONE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DITCH

5 - SECONDARY NESW 17 34N 25W LINCOLN

Source Name: SPRING, UNNAMED TRIBUTARY OF BRIMSTONE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DITCH

6 - SECONDARY NWSW 17 34N 25W LINCOLN

Source Name: SPRING, UNNAMED TRIBUTARY OF BRIMSTONE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DITCH

7 - SECONDARY SENE 18 34N 25W LINCOLN

Source Name: SPRING, UNNAMED TRIBUTARY OF BRIMSTONE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DITCH

8 - SECONDARY SENE 18 34N 25W LINCOLN

Source Name: SPRING, UNNAMED TRIBUTARY OF BRIMSTONE CREEK
Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DITCH

Period of Use: APRIL 1 TO OCTOBER 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 | 14.00 | | SESE | 7 | 34N | 25W | LINCOLN |
| 2 | 10.00 | | SWSWSW | 8 | 34N | 25W | LINCOLN |
| 3 | 50.00 | | N2SW | 17 | 34N | 25W | LINCOLN |
| 4 | 20.00 | | NENE | 18 | 34N | 25W | LINCOLN |
| 5 | 38.00 | | SENE | 18 | 34N | 25W | LINCOLN |
| 6 | 57.00 | | W2NW | 17 | 34N | 25W | LINCOLN |
| Total: | 189.00 | | | | | | |

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

143725-00

143726-00