

Montana Water Court
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FILED

JUN 11 2020

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
LITTLE BEAVER CREEK BASIN (39FJ)
PRELIMINARY DECREE

CLAIMANT: Robert A. Brewer

39FJ-R25
39FJ 35581-00
39FJ 35586-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. If this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this 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

Claims 39FJ 35581-00 and 39FJ 35586-00 appeared in the Preliminary Decree for Little Beaver Creek (Basin 39FJ) issued on November 1, 2018. The claims are owned by Robert Brewer. The claims did not receive objections, counterobjections, or notices of intent to appear but did receive issue remarks during the DNRC's claims reexamination.

FINDINGS OF FACT

1. Claim 39FJ 35581-00 is a water spreading claim with its point of diversion in the NWNESW of Section 25, T2N, R57E, Carter County. The claim received the following issue remark:

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 3.41 TIMES THE CAPACITY OF THE RESERVOIR.

2. Claim 39FJ 35581-00 originally claimed a volume of 428.00 acre-feet per year (AFY). Prior to the issuance of the Basin 39FJ Temporary Preliminary Decree, the DNRC reduced the claimed volume to comply with the DNRC's standards for water spreading claims of 2.10 AF per acre. Therefore, the volume appeared in the Basin 39FJ Temporary Preliminary Decree with a volume of 224.70 AFY.

3. Prior to the issuance of the Basin 39FJ Preliminary Decree, the volume was further reduced to 214.00 AFY to comply with the DNRC's current standards for water spreading claims.

4. On March 31, 2020, Claimant Robert Brewer contacted the Court and stated that there is no storage component to the reservoir associated with claim 39FJ 35581-00.

5. There is no evidence in the claim file that the decreed volume of 214.00 AFY is historically inaccurate. The volume has already been reduced to comply with the DNRC's water spreading standards and there is no evidence that there is a storage component to the reservoir.

6. Both claims received notice-type issue remarks regarding modifications the DNRC made during preparation of the Preliminary Decree. These remarks served their notice purposes and should be removed from each claim.

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 volume issue remark on claim 39FJ 35581-00 does not overcome the prima facie status of the claim. The volume has already been reduced to comply with the DNRC’s water spreading standards and there is no evidence in the claim or case files showing that the decreed volume of 214.00 AFY is historically inaccurate. The volume should remain as it appeared in the Basin 39FJ Preliminary Decree.

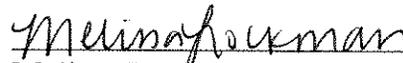
8. The notice-type issue remarks on the claims served their notice purposes and should be removed from each claim.

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 each water right claim reflecting the recommended changes is attached to this Report.

DATED this 11th day of June, 2020.



Melissa Lockman

Water Master

Service via USPS Mail

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