

Montana Water Court
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FILED
JUN 04 2020
Montana Water Court

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

CLAIMANT: John C. Hadley

39FJ-R39
39FJ 128380-00
39FJ 128381-00
39FJ 128382-00
39FJ 128383-00
39FJ 128384-00
39FJ 128385-00

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

The above-captioned claims appeared in the Preliminary Decree for Little Beaver Creek (Basin 39FJ) issued on November 1, 2018. The claims are owned by John C. Hadley. 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 128380-00 is a stock claim for an onstream reservoir. During the DNRC's preparation of the Preliminary Decree, the claims examiner made the following modifications to the point of diversion legal land description:

<u>ID</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		<u>SWNENE</u>	31	6N	61E	Fallon
		<u>SE</u>				

2. The DNRC then placed an issue remark on the claim stating that the place of use appeared to need modification based on the change to the point of diversion. The issue remark suggests the following modification to the place of use legal land description for claim 39FJ 128380-00:

<u>ID</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		<u>SWNENE</u>	31	6N	61E	Fallon
		<u>S2</u>				

4. On January 10, 2020, the Court ordered Claimant to file information or evidence if he did not agree with the DNRC's proposed modification to the place of use for claim 39FJ 128380-00. Nothing was filed by the ordered deadline.

5. All of the claims received notice-type issue remarks regarding modifications made by the DNRC during their reexamination of the claims. These remarks served their notice purposes and should be removed from the claims.

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 place of use issue remark overcomes the prima facie status of claim 39FJ 128380-00. The evidence in the claim file shows by a preponderance of the evidence that the place of use for claim 39FJ 128380-00 should be modified as described in Finding of Fact No. 2. This modification resolves the place of use issue remark and the issue remark should be removed from the claim.

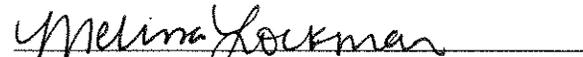
2. The notice-type issue remarks on the claims served their notice purposes and should be removed from the claim.

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

DATED this *4th* day of *June*, 2020.


Melissa Lockman
Water Master

Service via USPS Mail

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