

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: Cody Johnson

39FJ-R3
39FJ 22723-00
39FJ 22725-00

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 22723-00 and 39FJ 22725-00 appeared in the Preliminary Decree for Little Beaver Creek (Basin 39FJ) issued on November 1, 2018. The claims are owned by Cody Johnson. 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

39FJ 22723-00

1. Claim 39FJ 22723-00 is a stock claim from an onstream reservoir. a reservoir located in the NENWSW of Section 24, T5N, R60E, Fallon County. During the DNRC's preparation of the Preliminary Decree, the claim examiner made the following modifications to the claimed point of diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		E2 NWSW	24	5N	60E	Fallon
		<u>NE</u>				

2. The DNRC then placed an issue remark on the claim stating that the place of use appeared to need modification because the point of diversion had been modified and the reservoir did not appear to extend into Section 23. The issue remark proposed the following modifications to the place of use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENESE	23	5N	60E	Fallon
<u>21</u>			<u>NEN</u> WSW	24	5N	60E	Fallon

3. On November 1, 2019 the Court ordered Claimant to file evidence with the Court if he did not agree with the DNRC's proposed modifications to the place of use. Nothing was filed by the ordered deadline.

4. On January 2, 2020, the Court again ordered Claimant to file evidence with the Court if he did not agree with the DNRC's proposed modifications to the place of use. Nothing was filed by the ordered deadline.

39FJ 22725-00

5. Claim 39FJ 22725-00 is a water spreading claim with a point of diversion in the SENESE of Section 26, T5N, R60E, Fallon County. The claim received an issue

remark stating that the claimed volume of 20.00 acre-feet-per-year (AFY) exceeded the capacity of the associated reservoir.

6. The reservoir dimensions were added by the DNRC during claims reexamination and there is no information in the claim file that there is a storage component to the reservoir claimed under claim 39FJ 22725-00.

Notice-Type Remarks

7. Both claims received notice-type remarks regarding modifications made by the DNRC during its 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. 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.

5. 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.

6. 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

39FJ 22723-00

1. The place of use issue remark overcomes the prima facie status of claim 39FJ 22723-00. The historical place of use for claim 39FJ 22723-00 is as described in Finding of Fact No. 2. The place of use for claim 39FJ 22723-00 should be modified accordingly. This modification resolves the place of use issue remark and the remark should be removed from the claim.

39FJ 22725-00

2. The volume issue remark does not overcome the prima facie status of claim 39FJ 22725-00. The volume for claim 39FJ 22725-00 should remain as it appeared in the Basin 39FJ Preliminary Decree and the issue remark should be removed from claim 39FJ 22725-00.

Notice-Type Remarks

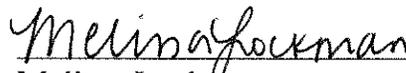
3. The notice-type remarks on each claim served their notice purposes and should be removed from the claims.

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 4th day of June, 2020.


Melissa Lockman
Water Master

Service via USPS Mail

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