

FILED

JUN 04 2020

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
BEAVER CREEK TRIBUTARY OF LITTLE MISSOURI RIVER - BASIN 39G  
PRELIMINARY DECREE

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CLAIMANTS: Joseph E. Bragg Jr.; Pamela J. Bragg; Christopher J.  
Chrudimsky

CASE 39G-R262  
39G 31545-00

**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, conclusion of law, or recommendations.

Rule 23 of the Water Right Adjudication Rules requires that written objections to the Master's Report must be filed within **10 days** of the date of the report. If the 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. The above stamped date indicates the date the Master's Report was filed and mailed.

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 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**

INTRODUCTION

Claim 39G 31545-00, co-owned by Christopher Chrudimsky and Joseph and Pamela Bragg (co-owners), appeared in the Preliminary Decree for Beaver Creek, Tributary to Little Missouri River (Basin 39G), with an issue remark received during the

Montana Department of Natural Resources and Conservation's (DNRC) preparation of the preliminary decree. The Water Court consolidated claim 39G 31545-00 into water court case 39G-R262 and ordered co-owners to meet with DNRC to resolve the issue remark. DNRC filed a March 25, 2020 memorandum (DNRC Memo) with the Water Court summarizing its recommendations to resolve the issue remark based on information received from co-owners, a verified motion to amend claim 39G 31545-00 signed by co-owners, and a map (Map) depicting the location of the well as indicated by Joseph Bragg.

#### ISSUE

*Whether the point of diversion and place of use (the location of the well) stated by the original statement of claim accurately reflect the historical location of the well for claim 39G 31545-00.*

#### APPLICABLE LAW

“The Montana water court has a statutory obligation and the exclusive authority to adjudicate claims of existing water rights.” Rule 1(a), W.R.Adj.R. Section 85-2-248(2), MCA, requires the Water Court to resolve all issue remarks not resolved through the objection process.

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. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. 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. The party seeking to overcome the prima facie status of a statement of claim, including DNRC, bears the burden of proof. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

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. When resolving issue remarks, the Water Court weighs the information resulting in the issue remark, the issue remark, and additional information obtained from DNRC, against the claimed water right. Section 85-2-247(2), MCA. The basis for the issue remark must overcome the prima facie status of the statement of claim by a preponderance of the evidence.

## DISCUSSION

The issue remark appearing on claim 39G 31545-00 states: “THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE WELL CANNOT BE IDENTIFIED FROM AVAILABLE DATA.” Claim 39G 31545-00 is a filed stock claim for groundwater from a well in Wibaux County, Montana. The original statement of claim and preliminary decree abstract for the claim state that the point of diversion and place of use is a well located at:

<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		1	NW	18	15N	61E	WIBAUX

The DNRC Memo, verified motion to amend, and Map indicate that the point of diversion and place of use stated by the temporary preliminary decree do not reflect the accurate historical location of the well. With DNRC assistance, Joseph Bragg indicated that the accurate historical location of the well (the point of diversion and place of use) is:

<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			SWSWSESE	12	15N	60E	WIBAUX

The DNRC Memo states that the information “provided confirms the location of the” well.

Because the DNRC issue remark did not reference the place of use, that element did not appear on the objection list and did not give waters users in Basin 39G the opportunity to review or file objections regarding that element. Co-owners therefore filed a verified motion to amend the place of use for claim 39G 31545-00 consistent with the requested modification to the point of diversion to reflect the accurate historical location of the well. Montana water law allows claimants to amend their water rights, but requires claimants to give other water users notice of proposed amendments with the potential to impact other water rights. *See* § 85-2-233(6), MCA. Here, the well is located on co-owners property, the proposed amendments reflect the historical location of the well, and there is no potential for impact to other water rights. Additional notice is not required.

The evidence in the record is sufficient to resolve the DNRC issue remark appearing on the claim and to accept co-owners’ proposed amendments to the point of diversion and place of use for claim 39G 31545-00. Co-owners and DNRC showed by a preponderance of the evidence that the historical location of the well associated with claim 39G 31545-00 (the point of diversion and place of use for the claim) is:

<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			SWSWSESE-NW	18 12	15N	61 60E	WIBAUX

RECOMMENDATION

This Water Master recommends that the issue remark appearing on claim 39G 31545-00 is resolved and should be removed, and that the point of diversion and place of use for claim 39G 31545-00 should be modified as follows:

Point of Diversion:

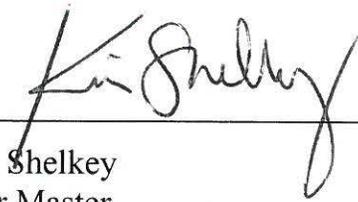
<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSWSESE-NW	18 12	15N	61 60E	WIBAUX

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			SWSWSESE-NW	18 12	15N	61 60E	WIBAUX

The post-decree abstract of the water right and Map are attached to this Master's Report.

DATED this 4<sup>th</sup> day of June, 2020.

  
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 Kirsia Shelkey  
 Water Master

Service via USPS Mail:

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