

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
Fax: (406) 522-4131
watercourt@mt.gov

FILED

JUN 11 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

CLAIMANTS: Mary H. Brown; George C. & Loises E. Dalthorp
Trust; June Eaton; Judy M. Jeffers; Bruce D. Wiley;
James E. Wiley

39G-R32
39G 182050-00
39G 185388-00

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. Because 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 39G 182050-00 and 39G 185388-00 appeared in the Preliminary Decree for Beaver Creek, Tributary to Little Missouri River (Basin 39G) issued on December 19, 2018. The claims did not receive objections, counterobjections, or notices of intent to appear, but did receive issue remarks. Issue remarks are notations identifying potential legal or factual issues with water rights and are placed on claims by the Department of Natural Resources and Conservation (DNRC) during preparation of the Preliminary Decree. These claims were consolidated into Case 39G-R32 to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 39G 182050-00 is a claim for stock water from Beaver Creek.
2. During its review in preparation for the Preliminary Decree, the DNRC placed the following issue remark on the claim:

THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

3. On January 8, 2020, this Court ordered the Claimants to meet with the DNRC in an informal effort to address this issue remark. The Claimants did not contact the DNRC.
4. Pursuant to a memorandum from Pam Weinmeister, water resources specialist with the Glasgow regional office of the DNRC, this claim should have been reviewed as one water right, and the source name issue remark was placed on the claim in error.
5. Ms. Weinmeister's memo states that points of diversion and places of use ID # 1 and 2 are located on Beaver Creek, while point of diversion and place of use ID # 3 is located on an unnamed tributary to Beaver Creek. This is consistent with the map submitted with the Statement of Claim. The memo recommends modifying the source name accordingly.
6. On April 1, 2020, this Court ordered the Claimants to file a statement with the Court if any of them disagreed with the proposed modification. None of the Claimants contacted the Court by the ordered deadline.

8. Claim 39G 185388-00 received issue remarks providing notice that the DNRC modified or added elements of the claim during its examination. These notice-type remarks state that if no objections are filed, the elements will remain as they appeared on the abstract and the remarks will be removed from the claims. The claim did not receive any objections.

PRINCIPLES OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA.

2. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. 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.

CONCLUSIONS OF LAW

1. The DNRC's recommendation to modify the source names of claim 39G 182050-00 overcomes the prima facie status of the claim.

2. The notice-type remarks have served their notice purpose. They do not raise unresolved issues or require further information and can be removed from claim 39G 185388-00.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, the source name for claim 39G 182050-00 should be modified as described in Finding of Fact No. 5, above, and the issue remarks should be removed from the claims.

Post-decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

DATED this 11th day of June, 2020.



Eyvind Ostrem
Water Master

Service via USPS Mail

Mary H Brown
PO Box 259
Lodge Grass, MT 59050

George C & Lois E Dalthorp Trust
Beth Johnson Trustee
7501 Gleason Rd
Edina, MN 55439-2559

June W Eaton
833 Ave D #201
Billings, MT 59102

Judy M Jeffers
PO Box 267
Lodge Grass, MT 59050

Bruce D Wiley
11129 Hwy 789
Riverton, WY 82501

James E Wiley
15002 127th Ave
Puyallup, WA 98374