

Montana Water Court
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FILED

JUN 02 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

CLAIMANT: Chaffee Land Co. LLC

39G-R33

39G 27591-00
39G 27592-00
39G 27593-00
39G 27594-00
39G 27599-00
39G 27601-00
39G 28215-00

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

The above-captioned claims, owned by Chaffee Land Co. LLC, 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. The claims were consolidated into Case 39G-R33 to for the purpose of resolving the issue remarks.

FINDINGS OF FACT

1. Claim 39G 28215-00 is a stock water claim that was decreed with the following place of use:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			32	16N	60E	WIBAUX
2		E2	28	16N	60E	WIBAUX
3		W2W2	27	16N	60E	WIBAUX
4		SW	22	16N	60E	WIBAUX

2. During its examination in preparation of the Basin 39G Preliminary Decree, the DNRC placed an issue remark on the claim suggesting the following modification to the place of use:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			32	16N	60E	WIBAUX
2		E2E2	28	16N	60E	WIBAUX
3		W2W2	27	16N	60E	WIBAUX
4		S2SW	22	16N	60E	WIBAUX

3. This modification would match this stock claim's place of use with its point of diversion.

4. On January 8, 2020, this Court ordered the Claimant to file a statement with the Court or otherwise contact the Court if it contested this modification. The Court informed the Claimant that if nothing was filed by the deadline, the place of use would be modified as described above.

5. The Claimant did not file a statement with the Court or otherwise contact the Court regarding this matter.

6. Claim 39G 27599-00 received the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DIKE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

7. On January 8, 2020, this Court ordered the Claimant to work with the DNRC to resolve this issue remark. On April 15, 2020, Pam Weinmeister, a Water Resource Specialist with the Glasgow Water Resources Office of the DNRC, filed a memorandum stating that the Claimant had not contacted the DNRC by the deadline and that she could not make recommendations as to the resolution of this issue remark.

8. The DNRC did not provide any information regarding what data it reviewed prior to adding this issue remark to the claim. The file includes a notation from the DNRC's initial examination, indicating that a DNRC employee viewed an aerial photo and determined that the point of diversion appeared correct. Maps included with the Statement of Claim are consistent with the claimed point of diversion.

9. Claims 39G 27591-00, 39G 27592-00, 39G 27593-00, 39G 27594-00, 39G 27601-00, and 39G 28215-00 each received an issue remark providing notice that the DNRC modified an element of the claim during its review in preparation of the Preliminary Decree (notice-type remarks). These issue remarks state that if no objections are received, the elements will remain as they appeared in the Preliminary Decree and the issue remarks will be removed. These claims 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.

4. 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. § 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. A preponderance of the evidence establishes that the proposed modification to the place of use of claim 39G 28215-00 reflects the historically accurate place of use for that claim. The place of use issue remark and the evidence upon which the remark is based overcome the prima facie status of the claim. The place of use for claim 39G 28215-00 should be modified as described in Finding of Fact No. 2 above and the place of use issue remark should be removed.

2. The point of diversion issue remark on claim 39G 27599-00 and the evidence upon which that remark is based fail to overcome the prima facie status of the claim. The point of diversion issue remark should be removed from claim 39G 27599-00.

3. The notice-type remarks have served their notice purpose. No objections were filed to the claims, and these remarks should be removed.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes outlined above.

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

DATED this *2nd* day of *June*, 2020.



Eyvind Ostrem
Water Master

Service via USPS Mail
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