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FILED
JUN 18 2020
Montana Water Court

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

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CLAIMANTS: Brian Sarsland; Susan Sarsland	**CASE 39G-R57** 39G 120700-00

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

Claim 39G 120700-00 appeared in the Preliminary Decree for Beaver Creek, Tributary to Little Missouri River (Basin 39G). The claim is owned by Brian and Susan Sarsland. The claim did not receive objections, counterobjections, or notices of intent to appear but did receive issue remarks during the DNRC's review of the claims.

The claim was consolidated into Case 39G-R57 to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 39G 120700-00 is a stock water claim. The Statement of Claim originally claimed the point of diversion as:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWSWNW	21	11N	61E	Wibaux

2. During the DNRC's claims reexamination in preparation for the Preliminary Decree, the DNRC added an issue remark stating:

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

3. On December 23, 2019, the Court ordered Claimants to provide information or evidence pertaining to the historic legal land description for the point of diversion for claim 39G 120700-00.

4. On January 10, 2020, Claimants filed evidence with the Court regarding the issue remark in the form of a map denoting the location of the dam. The Court requested the assistance of DNRC Water Resources Specialist Pam Weinmeister to interpret the location of the point of diversion. Upon review of the map received from Claimants, and information contained in the claim file, along with the assistance of Ms. Weinmeister, the location of the dam appears to be in the NWNWSW of Section 21, T11N, R61E, Wibaux County.

5. On January 31, 2020, the Court ordered Claimants to provide information or evidence if the proposed modification to the point of diversion was not accurate. Nothing was filed by the ordered deadline.

6. Claim 39G 120700-00 is a stock water claim with an on stream reservoir. Modifying the point of diversion would also require modification of the reservoir and place of use legal land descriptions.

7. Claim 39G 120700-00 also received a notice-type issue remark.

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 issue remark regarding the point of diversion overcomes the prima facie status of the claim. Based on the map provided by Claimants along with the fact that Claimants did not provide information or evidence disputing the interpretation of the map and proposed modification to the point of diversion, the evidence shows by a preponderance that the point of diversion should be modified as described in Finding of Fact No. 4. This correction resolves the issue remark and the issue remark should be removed from the claim.

2. The correction to the point of diversion does not have a reasonable potential to adversely affect other water users and therefore does not require further notice as provided for in Section 85-2-233(6), MCA. The modification to the point of diversion merely reflects a correction to the paper water right. The use of the water on the ground has not changed.

3. Because the claim is a stock water claim with an on stream reservoir, the reservoir and place of use legal land descriptions should be modified in accord with the modification to the point of diversion. This correction to the reservoir and the place of use does not have a reasonable potential to adversely affect other water users and therefore does not require further notice as provided for in Section 85-2-233(6), MCA.

4. The notice-type issue remark on claim 39G 12o700-00 served its notice purpose 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 of the water right claim reflecting the recommended changes is attached to this Report.

DATED this 18th day of June, 2020.

Eugene C. White

Eugene C. White
Water Master

Service via USPS Mail:
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