Montana Water Court
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FILED
JUN 18 2020
Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER BELOW ROUNDUP BASIN (40C)
PRELIMINARY DECREE

* *

CLAIMANT: Cat Creek Cattle Company	**40C-R149** 40C 167457-00

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

Water Right Claim 40C 167457-00 is a stock water claim that appeared in the Preliminary Decree for the Musselshell River, below Roundup (Basin 40C). The claim received an issue remark as a result of the Department of Natural Resources and

Conservation's (DNRC) preparation for the Decree. The claim did not receive any objections or notices of intent to appear.

The Court consolidated this claim into Water Court Case 40A-R149 on December 28, 2018. The order referred Claimant Cat Creek Cattle Company to the Lewistown Regional Office of the DNRC. After several extensions, the DNRC filed a memorandum with the Court on December 20, 2019. On January 3, 2019, the Court issued an order setting a filing deadline, by which Claimant was to file with the Court information resolving the issue remark. On February 4, 2020, Glenda Barbula, on behalf of Claimant, filed a statement with the Court.

FINDINGS OF FACT

1. Water Right Claim 40A 167457-00 appeared in the Preliminary Decree with two issue remarks. One issue remark states that Claimant did not claim a period of diversion, so the DNRC added a period of diversion to match the period of use. The issue remark states that it may be removed absent objections. The second issue remark indicates that the DNRC could not locate the claimed reservoir with available resources.

2. DNRC states in its December 20, 2020 memorandum that Claimant did not submit any materials to resolve the issue remark. DRNC further states that it is unsure where the reservoir is located without Claimant clarification.

3. Glenda Barbula is the secretary and treasurer of Claimant. Ms. Barbula submitted her statement, dated February 3, 2020 and filed February 4, 2020, in her capacity as an officer of Claimant.

4. Ms. Barbula states that the reservoir in question exists in a low spot on the source stream, a coulee that may not always contain water. She further states that the reservoir is small and may not appear on aerial imagery due to its size. Ms. Barbula confirms that the legal land description in the Preliminary Decree abstract is correct.

5. The issue remarks should be removed. Additionally, the runoff information remark should be removed.

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a

preponderance of the evidence. Section 85-2-227, MCA; 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.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

CONCLUSIONS OF LAW

1. The issue remark and the information leading to the issue remark's placement do not contradict and overcome the prima facie status of Claim 40C 167457-00.

2. The evidence in the record provides the Court with a sufficient basis to resolve and remove each issue remark on Claim 40C 167457-00.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A post-decree abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

DATED this 18th day of June, 2020.

Digitally signed by Colton Lauer

Colton J. Lauer
Water Master

Service via USPS Mail

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