

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

CLAIMANTS: D K Inc.

40C-R153
40C 167446-00
40C 167447-00

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

The above-captioned claims appeared in the Preliminary Decree for the Musselshell River, Below Roundup (Basin 40C) issued on June 7, 2017. The claims are owned by DK Inc. The claims did not receive objection, counterobjections, or notices of intent to appear but did receive issue remarks during the DNRC's preparation of the Preliminary Decree.

FINDINGS OF FACT

1. Each of the above-captioned claims received the following issue remark:
AN AMENDMENT WAS SUBMITTED ON 05/23/2016 REQUESTING TO AMEND THE RESERVOIR INFORMATION. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.
2. On December 4, 2019, the Court held a status conference to determine whether any of the Claimants wished to pursue the amendments. The Claimant did not appear at the conference.
3. Subsequent to the status conference, the Court set a filing deadline to clarify whether the Claimants intended to pursue the amendments. Nothing was filed by the ordered deadline
4. On January 16, 2020, the Court set a show cause deadline for Claimant to show cause why the requested amendments should not be dismissed. Again, nothing was filed by the ordered deadline.
5. Claim 40C 167447-00 appeared in the Preliminary Decree as a stock water claim with a priority date of May 3, 1982 and with the following issue remark concerning the priority date:
THE WATER COURT CANNOT DECREE THIS RIGHT WITHOUT FURTHER PRESENTATION OF EVIDENCE CONCERNING PRIORITY DATE OF THIS WATER RIGHT. TO ASSURE THE ORDERLY ADJUDICATION OF WATER RIGHTS, THE COURT WILL SET A HEARING TO DETERMINE THIS ISSUE IF NO OBJECTIONS ARE MADE.

6. When the Statement of Claim was filed on May 3, 1982, the priority date listed was May 17, 1972. However, because no Notice of Appropriation was filed, the claim was given a priority date matching the date the Statement of Claim was filed.

7. On March 10, 2020, the Court set a filing deadline for Claimant to file additional documentation pertaining to the priority date. Nothing was filed by the ordered deadline.

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. 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.

5. 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.

6. 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.

7. The party seeking to overcome the prima facie status of a Statement of Claim bears the burden of proof; this burden also applies to a claimant’s objection to his own claim. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

8. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

9. If a Notice of Completion was not filed by a ground water appropriator whose right was subject to the Montana Ground Water Code of 1961, the right shall instead receive a priority date as of the filing of the Statement of Claim for this adjudication. Section 85-2-306(4), M.C.A.

CONCLUSIONS OF LAW

1. Based on the Claimant's failure to pursue these amendments, the amendments should be dismissed pursuant to Rule 22, W.R.Adj.R. The issue remark regarding the amendments should be removed from the claims and all elements should remain as they appeared in the Basin 40C Preliminary Decree.

2. Because the Claimant did not file additional documentation pertaining to the priority date for claim 40C 167447-00, the priority date should remain May 3, 1982, the date that the Statement of Claim was filed. The issue remark pertaining to the priority date for claim 40C 167447-00 should be removed.

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 claims reflecting the recommended changes is attached to this Report.

DATED this *18th* day of *June*, 2020.

Eugene C. White

Eugene C. White
Water Master

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