

Montana Water Court
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FILED

JUN 02 2020

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

CLAIMANTS: David A. Smith; Kyra Ds. Williams; Richard G. Williams;
Berniece F. Smith; Doty Smith; Town of Whitehall

COUNTEROBJECTOR: Wilken Family Trust

41G-R238
41G 38529-00
41G 46218-00
41G 46219-00

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 41G 38529-00, 41G 46218-00, and 41G 46219-00 appeared in the Preliminary Decree for the Jefferson River Basin (Basin 41G) dated February 15, 2018. Each claim received an issue remark and a counterobjection from the Wilken Family Trust. The claims were consolidated into Case 41G-R238 to resolve the issue remarks and counterobjections.

FINDINGS OF FACT

1. Claims 41G 38529-00, 41G 46218-00, and 41G 46219-00, owned by David Smith, Kyra Williams, Richard Williams, Berniece Smith, Doty Smith, and the Town of Whitehall, each received a counterobjection from the Wilken Family Trust.
2. On April 27, 2020, the Court received Wilken Family Trust's withdrawal of its counterobjections to each of the claims in this case.
3. Each claim also received an issue remark providing notice that the DNRC modified an element of the claim during its examination in preparation of the Basin 41G Preliminary Decree (notice-type remarks).

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298
2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA., 367 P.3d 732; §§ 85-2-233, -102(12), MCA.

CONCLUSIONS OF LAW

1. The notice-type issue remarks have served their notice purpose and may be removed from the claims.

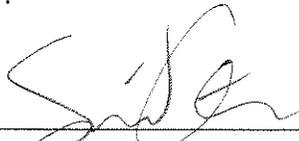
RECOMMENDATIONS

1. Upon review of the record in this case, the counterobjections by the Wilken Family Trust should be dismissed pursuant to its withdrawal.

2. The notice-type 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 *2nd* day of *June*, 2020.



Eyvind Ostrem
Water Master

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