

Montana Water Court
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FILED

JUN 11 2020

Montana Water Court

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

CLAIMANT: Steven S. Hamilton

OBJECTOR: United States of America (USDA Forest Service)

CASE 41G-R38
41G 48455-00
41G 48456-00

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

FINDINGS OF FACT

1. Claims 41G 48455-00 and 41G 48456-00 are owned by Steven Hamilton and are water rights for the Potosi Hot Springs.

2. The claims appeared in the 41G Preliminary Decree with notice issue remarks. The United States Forest Service (USFS) filed objections to both claims.

3. A status conference was held in January 2020. Claimant Hamilton did not appear. A settlement period was provided for the parties to determine whether they could reach a settlement agreement to resolve the USFS objections.

4. The USFS filed a status report indicating that attempts to reach Claimant Hamilton had been unsuccessful. The USFS requested that the following information remark be placed on both claims 41G 48455-00 and 41G 48456-00:

THE PLACES OF USE AND POINTS OF DIVERSION ARE LOCATED SOLELY ON PRIVATE LANDS AND DO NOT INCLUDE FEDERAL LANDS.

The USFS indicated that the addition of the remark would resolve its objections.

5. A deadline was set for Claimant Hamilton to show cause why the above information remark should not be added to claims 41G 48455-00 and 41G 48456-00. Nothing was filed by the deadline.

6. The issue remarks appearing on claims 41G 48455-00 and 41G 48456-00 are notice-type remarks. The remarks provided notice that an objection filed during the 41G Temporary Preliminary Decree was amended to include flow rate and volume. No objections were filed to claims 41G 48455-00 and 41G 48456-00 concerning flow rate or volume. The issue remarks should be removed.

CONCLUSIONS 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. 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.

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.

3. If a claimant fails to comply with an Order issued by the Water Court in its review of issue remarks, including an Order issued by a Water Master appointed by the Court, the Court on its own initiative may amend or dismiss the claim to conform with information in the claim file or information obtained as part of the adjudication process. Section 85-2-248(9) MCA

4. The issue remarks appearing on claims 41G 48455-00 and 41G 48456-00 are notice type issue remarks. The remarks have served their purpose of providing notice and may be removed.

5. The information remarks requested clarify the location of the points of diversion and places of use for claims 41G 48455-00 and 41G 48456-00. The information remarks do not change the elements of the claim. The claimant was given an opportunity to comment on the addition of the information remarks and did not file anything by the deadline. The information remarks should be added to claims 41G 48455-00 and 41G 48456-00 to clarify that the points of diversion and places of use are located solely on private lands and do not include federal lands.

RECOMMENDATIONS

1. The issue remarks should be removed from claims 41G 48455-00 and 41G 48456-00.

2. Information remarks should be added to claims 41G 48455-00 and 41G 48456-00 clarifying the location of the points of diversion and places of use.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

DATED this 11th day of June, 2020.



Digitally signed by
Madeleine Weisz

Madeleine Weisz
Senior Water Master

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