

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: Briggs Family Investments LLC; Briggs Family Trust;
Jeffery C. Briggs; Stacy M. Briggs

OBJECTOR: Dean Briggs

41G-R401
41G 34376-00
41G 34377-00

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 34376-00 and 41G 34377-00 appeared in the Preliminary Decree for the Jefferson River Basin (Basin 41G) dated February 15, 2018. Each claim received an objection from Dean Briggs and multiple issue remarks. Issue remarks are placed on water rights by the Department of Natural Resources and Conservation (DNRC) during the claim examination process. These claims were consolidated into Case 41G-R401 to resolve the objections and issue remarks.

FINDINGS OF FACT

1. Claims 41G 34376-00 and 41G 34377-00 are irrigation claims owned by Jeffery Briggs, Stacy Briggs, the Briggs Family Trust, and Briggs Family Investments LLC.
2. Neither of these water rights originally claimed a ditch name, but each claim appeared in the Preliminary Decree with the ditch name "Briggs Ditch" for point of diversion 1.
4. Dean Briggs objected to the addition of the ditch name "Briggs Ditch," stating, "the ditch does not exist and to avoid confusion reference to it should be removed"
5. The 1946 Water Resources Survey map, which Dean Briggs attached to his objection, does not reference a "Briggs Ditch" at or near the claimed point of diversion.
6. On April 22, 2020, this Court held a status conference, in which Dean Briggs appeared on behalf of Briggs Family Investments LLC, the Briggs Family Trust, and himself. Jeffery Briggs appeared on behalf of himself, and Stacy Briggs did not appear.
7. All the parties participating in the status conference agreed with the objection: that "Briggs Ditch" does not exist, and this name should be removed from the claims.
8. The ditch name on claim 41G 34376-00 appears to have been added by the DNRC during its examination in preparation of the Preliminary Decree. The DNRC was

ordered to standardize ditch names during this examination, and the DNRC placed an issue remark on Claim 41G 34376-00 stating that it modified the ditch name for that claim pursuant to Water Court reexamination orders.

9. Claim 41G 34377-00 did not receive a ditch name issue remark, but the ditch name also appears to have been added by the DNRC at some point after the Basin 41G Temporary Preliminary Decree.

10. The DNRC did not indicate to the Court what information it relied upon in adding “Briggs Ditch” as a ditch name, and the file does not contain evidence supporting DNRC’s addition of the ditch name.

11. Each claim also received a source name issue remark, which provides notice that the DNRC modified the source in preparation of the Preliminary Decree.

PRINCIPLES 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.

2. 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.

CONCLUSIONS OF LAW

1. A preponderance of the evidence establishes that “Briggs Ditch” is not a historically accurate ditch name for Claims 41G 34376-00 and 41G 34377-00. The addition of the ditch name fails to overcome the prima facie status of the Statement of Claim. Therefore, the ditch name “Briggs Ditch” should be removed from the claims.

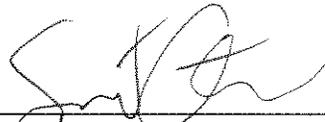
2. The ditch name issue remark on Claim 41G 34376-00 and the source name issue remarks have served their notice purposes and should be removed from the claims.

RECOMMENDATIONS

1. Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes outlined above.

2. 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

Service via USPS Mail

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