

Montana Water Court
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FILED

JUN 18 2020

Montana Water Court

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

CLAIMANT: H Double C LLC

CASE 41G-R60
41G 215117-00

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. Claim 41G 215117-00 is a stock claim owned by H Double C LLC. It appeared in the 41G Preliminary Decree with issue remarks. It did not receive objections during the 41G Preliminary Decree objection period.

2. On March 25, 2020, H Double C LLC filed a Motion to Amend and Correct Claimed Period of Use. The Motion to Amend requests that the period of use be corrected from April 1 – October 1 to April 1 – October 4. In support, the claimant points out that the statement of claim form for 41G 215117-00 clearly claims a period of use of April 1 – October 4. The claimed period of use was reflected as April 1 – October 4 as recently as December 14, 2016, the date of the general abstract attached to the Motion to Amend.

3. It appears that during the claim review process, the DNRC changed the period of use to April 1 – October 1 in an incorrect attempt to address a well-known database software error that mistakenly changed the period of use for some claims. April 1 – October 4 reflects the claimed period of use for 41G 215117-00. The claimed period of use should be reinstated.

Additionally, the claimed period of diversion should also be corrected so that it matches the period of use. Period of diversion was not an element added to claims until 2008. See December 11, 2008 Order on Period of Diversion. When the DNRC added period of diversion to claims it was instructed to match the period of diversion to the period of use in most situations. The general abstract for claim 41G 215117-00 shows that in 2016 the period of use and period of diversion were both April 1 – October 4. Accordingly, both period of use and period of diversion were incorrectly modified to April 1 – October 1. The mistake should be corrected by modifying for the period of use and period of diversion for claim 41G 215117-00 to April 1 – October 4.

4. The following issue remarks are considered notice remarks that do not require further proceedings:

CLAIM FILED LATE 06/18/1996 . IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA. CLAIM WAS NOT INCLUDED IN THE BASIN 41G TEMPORARY PRELIMINARY DECREE ISSUED 10/17/89.

A notice issue remark provides notice to claimants and other water users of certain aspects of a claim; if the claim does not receive any objections, the remark may be removed.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water 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. The issue remarks on claim 41G 215117-00 were placed on the claim to provide notice of certain aspects of the claim. The remarks have served their purpose and may be removed.

3. The Water Court may correct a clerical mistake or a mistake arising from oversight or omission where one is found in a part of the record. Rule 60(a), M.R.Civ.P. The period of use and period of diversion were mistakenly modified by the DNRC prior to the issuance of the 41G Preliminary Decree. The mistake should be corrected and the period of use and period of diversion should be decreed as April 1 – October 4.

RECOMMENDATIONS

1. The issue remarks should be removed from claim 41G 215117-00.
2. The period of use and period of diversion for claim 41G 215117-00 should be corrected as provided above.

A Post Decree Abstracts of Water Right Claim is served with the Report to confirm that the recommended corrections have been made in the state's centralized record system.

DATED this 18th day of June, 2020.

 Digitally signed by
Madeleine Weisz

Madeleine Weisz
Senior Water Master

Service Via Electronic Mail:

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