

Montana Water Court
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FILED

JUN 25 2020

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
CLARKS FORK YELLOWSTONE RIVER BASIN (43D)
PRELIMINARY DECREE

CLAIMANTS: Linda S. Picchioni; Albert J. Picchioni

CASE 43D-R333
43D 39271-00

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 the 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 the Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objection the concern of the notice of intent to appear parties was resolved ns to the Master's Report must be filed within 10 days of the date of the Master's Report.

Because the Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. This means your objection must be received no later than **13 days** from the above stamped date.

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 the 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

Statement of the case

Domestic claim 43D 39271-00 received the following issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NENESW SEC 17 TWP 8S RGE 20E CARBON COUNTY.

Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. Montana law requires the Water Court to resolve issue remarks.

The issue remark was not resolved through the objection process and there was not enough information in the claim file or before the Court to resolve the issue remark. Pursuant to § 85-2-248(3), MCA, the Court may first contact claimants for further evidence in an attempt to resolve the issue remarks. Therefore, a deadline was set for Linda S. Picchioni and Albert J. Picchioni (“Picchionis”) to file evidence resolving the issue remark. The Picchionis filed a statement.

Issues

Preliminary Decree abstract 43D 39271-00 identifies the point of diversion legal land description as Section 17, Township 8 South, Range 20 East.

1. What is the historically accurate point of diversion?
2. Is the point of diversion issue remark resolved?

Finding of fact

The Picchionis’ statement confirmed the historically accurate point of diversion for claim 43D 39271-00 is the NENESW of Section 17, Township 8 South, Range 20 East.

A preponderance of evidence establishes the historically accurate point of diversion for claim 43D 39271-00 is the NENESW of Section 17, Township 8 South,

Range 20 East.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 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 an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. When resolving issue remarks, the Montana 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.

4. 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. Section 85-2-248(3), MCA.

Analysis

Issues 1 and 2 – point of diversion and point of diversion issue remark resolution

The point of diversion issue remark, the information resulting in the issue remark, and Picchionis’ statement in agreement with the issue remark overcomes, by a preponderance of evidence, the *prima facie* proof afforded the point of diversion identified by statement of claim 43D 39271-00.

Conclusions of law

The historically accurate point of diversion for claim 43D 39271-00 is the NENESW of Section 17, Township 8 South, Range 20 East. The point of diversion issue remark is resolved.

Recommendations

Based upon the foregoing, domestic claim 43D 39271-00 should be modified as follows to accurately reflect historical use.

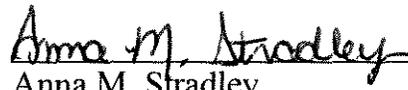
POINT OF DIVERSION AND MEANS OF DIVERSION:

<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	NENESW	17	8S	20E	CARBON

The point of diversion issue remark should be removed from the claim abstract.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm the recommendations have been implemented in the state's centralized water right record system.

DATED this 25th day of June, 2020.


Anna M. Stradley
Senior Water Master

Service via USPS Mail

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Note: Service List Updated 6.24.20