

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

CLAIMANT: James L. Smith

CASE 43D-R354
43D 198635-00

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 objections 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

Irrigation claim 43D 198635-00 received the following issue remarks.

NO PERIOD OF USE HAS BEEN CLAIMED. THE USUAL AND REASONABLE PERIOD OF USE IN THIS AREA IS MARCH 15 TO NOVEMBER 15.

THE PERIOD OF DIVERSION MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF THE PERIOD OF USE ISSUE.

ALTHOUGH NOT OBJECTED TO, THE PLACE OF USE WAS CHANGED TO REFLECT THE REDUCTION IN MAXIMUM ACRES IRRIGATED.

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. The Water Court may also add an issue remark to a claim. Montana law requires the Water Court to resolve issue remarks.

The issue remark concerning place of use was resolved based upon information before the court.

The issue remarks concerning period of use and period of diversion were not resolved through the objection process and there was not enough information in the claim file or before the Court to resolve the issue remarks. 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 James L. Smith to file evidence resolving the issue remarks. Mr. Smith filed a statement with the court.

Issues

No period of use or period of diversion were identified for claim 43D 198635-00.

1. What period of use and period of diversion should be identified by claim 43D 198635-00?
2. Are the period of use and period of diversion issue remarks resolved?
3. Is the notice issue remark concerning place of use resolved?

Finding of fact

Mr. Smith's statement confirmed the period of use and period of diversion for claim 43D 198635-00 should be the dates suggested by the issue remarks, March 15 to November 15.

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 – period of use, period of diversion, and period of use and period of diversion issue remark resolution

The period of use and period of diversion issue remarks, the information resulting in the issue remarks, and Mr. Smith's statement in agreement with the issue remarks provides the information not included on statement of claim 43D 198635-00.

Conclusions of law

The period of use and period of diversion for claim 43D 198635-00 is March 15 to November 15. The period of use and period of diversion issue remarks are resolved.

Issue 3 – place of use issue remark resolution

The court modified the number of acres under the place of use element to match the maximum acres irrigated element. The court added an issue remark to the claim noting the modification was adopted without providing notice to water users. No objections were filed against claim 43D 198635-00 and the deadline to file objections has expired. The issue remark fulfilled its purpose of giving notice to claimant and other water users that the number of acres identified by the place of use were modified to match the reduction in the maximum acres irrigated.

Conclusion of law

The notice issue remark concerning place of use served its purpose.

Recommendations

Based upon the foregoing, irrigation claim 43D 198635-00 should be modified as follows to accurately reflect historical use.

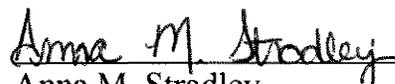
PERIOD OF USE: **BLANK** **MARCH 15 TO NOVEMBER 15**

PERIOD OF DIVERSION: **BLANK** **MARCH 15 TO NOVEMBER 15**

The issue remarks 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

James L. Smith
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