

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
(406) 522-4131 fax
watercourt@mt.gov

FILED

JUN 11 2020

Montana Water Court

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

CLAIMANTS: Gary L. Spaeth; Leon Spaeth

43D-R371
43D 197704-00

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

The Water Court issued two decrees for Basin 43D - the Temporary Preliminary Decree in 1993 and the Preliminary Decree in 2017.

Irrigation claim 43D 197704-00 appeared in both decrees with issue remarks. Issue remarks result from DNRC claims examination. DNRC confirms the historical use of water right claims and identifies issues with claims. If DNRC cannot confirm some aspect of a claim, DNRC adds an issue remark to the claim.

The issue remarks in the 1993 Temporary Preliminary Decree identified the following issues:

- 100.00 acres irrigated in 1946,
- 108.00 acres irrigated in 1966, and
- 114.00 acres irrigated in 1980.

The issue remarks in the 2017 Preliminary Decree identify the following issues:

- 100.00 acres irrigated in 1946, and
- 108.00 acres irrigated in 1966.

No objections were filed to the claim. Montana law requires the Water Court to resolve issue remarks.

Issue

Are the maximum acres irrigated issue remarks resolved?

Findings of Fact

A preponderance of evidence establishes the following facts:

1. Claim 43D 197704-00 was the subject of previous Water Court proceedings. A February 13, 1997 Stipulation decreased the maximum acres irrigated from 140.00 to 114.00.
2. The Court adopted the 114.0 maximum acres irrigated as historically accurate and removed the 114.00 maximum acres irrigated issue remark, but not the 100.00 or

108.00 acres irrigated issue remarks. (See Feb. 24, 1997 Master's Report, Findings of Fact 4 and 5, Case 43D-162 and Mar. 18, 1997 Order Adopting Master's Report.)

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. Prima facie proof may be 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

Issue remark resolution

The issue remarks identifying 100.00 acres of irrigation in 1946 and 108.00 acres of irrigation in 1966 are resolved. The issue remarks do not outweigh the record or previous decision made by the Court.

Conclusion of law

The maximum acres irrigated issue remarks are resolved.

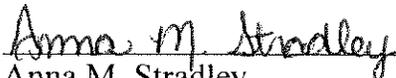
Recommendations

The elements of irrigation claim 43D 197704-00 accurately reflect historical use. No changes to the elements of the claim should be made.

The issue remarks should be removed from the claim abstract.

A Post Decree Abstract of Water Right Claim accompanies this Report to confirm the removal of the issue remarks in the state's centralized record system.

DATED this 11 day of JUNE, 2020.


Anna M. Stradley
Senior Water Master

Service via USPS Mail

Gary L Spaeth
1012 8th St
Helena, MT 59601

Leon Spaeth
242 Grapevine Rd
Joliet, MT 59041