

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: West Fork Irrigation Co. Inc.

43D-R379
43D 168-00
43D 170-00

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 claims 43D 168-00 and 43D 170-00 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 concern the maximum number of acres irrigated. No objections were filed to the claims. Montana water 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. Claims 43D 168-00 and 43D 170-00 were the subject of previous Water Court proceedings. January 24, 1996 Affidavits from Paul James (Jim) Roat, Gus Gabrian, Ludwig Gabrian, Hugo Rattin, and James Kane attested to the historical use of these claims. The Affidavits decreased the place of use and maximum acres irrigated from 2,086.70 to 1,730.70. (See July 14, 1997 Master's Report, Findings of Fact 6 and 12, Case 43D-44 and August 15, 1997 Order Adopting Master's Report.)
2. The Court adopted the 1,730.70 maximum acres irrigated as historically accurate and removed one but not all the maximum acres irrigated issue remarks. (See July 14, 1997 Master's Report, Findings of Fact 15 and 16, Case 43D-44 and August 15, 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 1 – issue remark resolution

The issue remarks identifying 1,386.00 acres of irrigation in 1943, and 1,698.00 acres of irrigation in 1965 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.

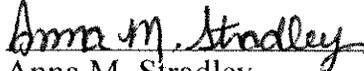
Recommendations

The elements of irrigation claims 43D 168-00 and 43D 170-00 accurately reflect historical use. No changes to the elements of the claims should be made.

The issue remarks should be removed from the claim abstracts.

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

DATED this 25th day of June, 2020.


Anna M. Stradley
Senior Water Master

Service via USPS Mail

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