

Montana Water Court
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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

CLAIMANT: Joliet Ditch Co

NOTICE OF INTENT TO APPEAR: Maurice B. Johnson

CASE 43D-R47
43D 4944-00
43D 4945-00
43D 4946-00
43D 4947-00

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.

The above captioned Joliet Ditch Co. irrigation claims 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 identify issues with the maximum number of acres irrigated.

No objections were filed to the claims. Maurice Johnson filed a notice of intent to appear for claims 43D 4945-00 and 43D 4947-00.

The parties attended a status conference. Discussion at the conference concerned:

- a clerical error in the number of acres irrigated by claim 43D 4944-00, and
- Mr. Johnson's notice of intent to appear for claims 43D 4945-00 and 43D 4947-00.

During Temporary Preliminary Decree case proceedings, a stipulation resulted in the agreement that all Joliet Ditch Co. claims, including claim 43D 4944-00, irrigated an 844.00 acre place of use.

Mr. Johnson's concern was the point of diversion identified by claims 43D 4945-00 and 43D 4947-00. Point of diversion was not an element identified by the objection list for these claims. Therefore, Mr. Johnson's concern regarding point of diversion could not be entertained. Discussion was held that Joliet Ditch Co. could conclude based upon discussion with Mr. Johnson in Case 43D-R46, that the point of diversion required modification. Mr. Johnson unconditionally withdrew his notice of intent to appear in Case 43D-R46. Joliet Ditch Company did not request modification of the point of diversion. A deadline was set for Mr. Johnson to affirm his concerns regarding claims 43D 4945-00 and 43D 4947-00 were resolved by no modifications to the claims. The

order stated that Mr. Johnson's failure to comply with the filing deadline would be considered his acknowledgment that his concerns were addressed by no modifications to claims 43D 4945-00 and 43D 4947-00. Mr. Johnson did not file any comment by the deadline.

Montana law requires the Water Court to resolve all issue remarks and notices of intent to appear.

Issues

1. Should the maximum acres irrigated and place of use identified by claim 43D 4944-00 be corrected?
2. Are the maximum acres irrigated issue remarks resolved?

Findings of Fact

A preponderance of evidence establishes the following facts:

1. The above captioned claims were the subject of previous Water Court proceedings. On July 31, 1996, the parties filed a stipulation during Temporary Preliminary Decree proceedings in Case 43D-55 that agreed to the same number of maximum acres irrigated and place of use for all Joliet Ditch Co. irrigation claims. Each Master's Report, adopted by the Court, found the historically accurate maximum number of acres irrigated and place of use was for 844.00 stipulated acres except for claim 43D 4944-00. (See July 2, 1997 Master's Report, Findings of Fact 8 and 9, Case 43D-102 and September 16, 1997 Order Adopting (claim 43D 4943-00); February 27, 1998 Master's Report, Findings of Fact 4, 13, and 14, Case 43D-55 and May 26, 1998 Order Adopting Master's Report (claim 43D 4945-00); February 7, 1997 Master's Report, Findings of Fact 4 and 5, Case 43D-R56 and February 28, 1997 Order Adopting Master's Report (claim 43D 4946-00); and November 25, 1997 Master's Report, Findings of Fact 8 and 9, Case 43D-122 and December 15, 1997 Order Adopting Master's Report (claim 43D 4947-00)).
2. The historically accurate place of use and maximum number of acres irrigated

for all Joliet Ditch Co. irrigation claims is 844.00 acres.

3. The maximum acres irrigated and place of use identified by claim 43D 4944-00 should be corrected to reflect the stipulated 844.00 acre place of use for all Joliet Ditch Co. irrigation claims.

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.

5. A clerical mistake or mistake arising from omission or oversight may be corrected by the court at any time. Rule 60(a), M.R.Civ.P.

Analysis

Issue 1 – corrected place of use and maximum acres irrigated claim 43D 4944-00

The Water Court accepted the parties’ stipulation during Temporary Preliminary

Decree proceedings for each of the above captioned claims. The Court modified each of Joliet Ditch Company's irrigation claims based upon the Stipulation except claim 43D 4944-00. The failure to modify the maximum acres irrigated and place of use for claim 43D 4944-00 is a clerical error.

Conclusion of law

The maximum acres irrigated and place of use identified by claim 43D 4944-00 should be corrected to reflect the terms stipulated to during Temporary Preliminary Decree proceedings for all Joliet Ditch Co. claims, including claim 43D 4944-00. A copy of the Stipulation is included with this report and resides in claim file 43D 4944-00.

Issue 2 – issue remark resolution

The Court previously determined the 844.00 acre place of use was historically accurate for all Joliet Ditch Co. irrigation claims. The maximum number of acres irrigated do not require adjustment.

Conclusion of law

The maximum acres irrigated issue remarks on each claim are resolved.

Recommendations

The elements of irrigation claims 43D 4945-00, 43D 4946-00, and 43D 4947-00 accurately reflect historical use. No changes to the elements of the claims should be made.

The maximum acres irrigated and place of use identified by claim 43D 4944-00 should be corrected as follows:

<u>MAXIMUM ACRES:</u>	821.29	844.00
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PLACE OF USE:

SEE MODIFIED ABSTRACT ATTACHED TO THIS REPORT.

The issue remarks should be removed from the claim abstracts.

Post Decree Abstracts of Water Right Claim confirming the proposed recommendations and removal of the issue remarks in the state's centralized record system accompany this Report.

DATED this // th day of *JUNE*, 2020.



Anna M. Stradley
Senior Water Master

Service via USPS Mail

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