

Montana Water Court
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FILED

JUN 02 2020

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
BIGHORN RIVER, BELOW GREYBULL RIVER (43P)

CLAIMANTS: Cliff Groombridge; Shirley Groombridge; Thomas
Whiteman Sr.; Thomas T. Zwick

CASE 43P-207
43P 190246-00

OBJECTORS: Apsaalooke (Crow) Tribe; United States of America
(Bureau of Indian Affairs)

NOTICE OF FILING OF MASTER'S REPORT

You may file a written objection to the Report if you disagree with the Master's Findings of Fact, Conclusions of Law, or Recommendations, or if there are errors in the Report.

The above stamped date indicates the date the Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires that written objections to a 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
FINDINGS OF FACT**

1. Claim No. 43P 190246-00 appeared in the Preliminary Decree for the Bighorn River, Below Greybull River (Basin 43P) with issue remarks. The Apsaalooke (Crow) Tribe and the United States of America (Bureau of Indian Affairs) (“BIA”) filed Objections to the claim.

2. On March 1, 2019 the above captioned claim was consolidated into Case 43P-207.

3. On October 21, 2019, a partially executed Stipulation was filed with the Court. The Stipulation indicated that the Claimant and the BIA had agreed to the modification of Claim No. 43P 190246-00. A copy of the Stipulation shall be placed in the claim file.

4. On January 31, 2020, an Order was issued by this Court, ordering the Crow Tribe to file evidence sufficient to show cause why the Tribe had failed to sign the proposed stipulation in the time allotted by the Court. The Tribe failed to file evidence or otherwise respond to the Court’s order.

5. Pursuant to the Stipulation, the parties propose that Claim No. 43P 190246-00 be modified as follows:

Priority Date: May 7, 1868

Type of Historical Right: Reserved

THIS WATER RIGHT IS A WALTON RIGHT.

THIS WATER RIGHT IS NOT PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE CROW COMPACT.

Point of Diversion and Place of Use:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
<u>1</u>		<u>NE</u>	<u>29</u>	<u>2S</u>	<u>33E</u>	<u>Big Horn</u>

Clarification Remark: The full correct legal description for the Points of Diversion and Places of Use in NE, 29-T02S-R33E are “Corrected Tract 1A of Amended Tract 1, Corrected Tract 2A of Amended Tract 2, and Corrected Tract 2B of Amended Tract 2 now described as Certificate of Survey No. 396” and “Certificate of Survey No. 402” on file with the Big Horn County Register of Deeds.

6. A just sanction applied against the Crow Tribe for failure to comply with an order issued by this Court is to dismiss their objections to the claims.

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA. The purpose of the Water Court is to adjudicate rights to the use of water as they existed on July 1, 1973. *In re Clark Fork River*, 254 Mont. 11, 17, 833 P.3d 1120 (Mont. 1992).

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 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 the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. “The Water Court is not bound by settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court.” Rule 17(a), W.R.Adj.R.; *In re Argabright*, 2014 Mont. Water LEXIS 9, 41I 265 (December 12, 2014).

4. Where a claimant agrees to reduce or limit an element of a claim, “the water court does not need to determine whether the burden of proof has been met.” Rule 17(c), W.R.Adj.R. The Court may accept the requested reduction or limitation “without further presentation of evidence.” Rule 17(c), W.R.Adj.R.

5. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing, or fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R. Sanctions applied against objectors may include dismissal of the objector from the proceeding. Rule 22, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The Stipulation conforms to applicable law. Claim No. 43P 190246-00 should be modified as discussed above.

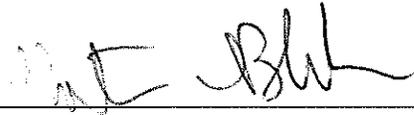
2. The Crow Tribe's objections should be dismissed as a sanction for failure to comply with an order issued by the Court. *See Order Setting Show Cause Filing Deadline, January 31, 2020.*

RECOMMENDATIONS

1. Upon review of the record in this case, Claim No. 43P 190246-00 should be modified as discussed. The Crow Tribe's Objections should be dismissed.

A Post Decree Abstract of Water Right Claim is attached to this Master's Report for review.

DATED this *2nd* day of *June*, 2019.



Nathan Block
Water Master

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