

Montana Water Court
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FILED

JUN 09 2020

Montana Water Court

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

CLAIMANT: John P. Tillett; Loretta L. Tillett; Royce & Marian J. Tillett
1989 Trust

OBJECTOR: United States of America (Bureau of Land Management)

43P-7
43P 33263-00
43P 33267-00
43P 33268-00
43P 33269-00
43P 33270-00
Split Claims:
43P 30146976
43P 30146977

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 this Master's 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 this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within **10 days** of the date of the Master's Report. If this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

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 this 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

The claims in this case appeared in the 43P Preliminary Decree with issue remarks regarding ownership issues. Claims 43P 33263-00 and 43P 33264-00 are co-owned by Tillett Ranch¹ (Tilletts) and Royce E. Tillett Trust (Trust).

The United States of America (Bureau of Indian Affairs) objected to the claims and they were then consolidated into Case 43P-7.

FINDINGS OF FACT

1. On July 24, 2019, Tilletts and BIA filed a Stipulation resolving the Objections and the DNRC issue remarks.
2. The Trust was given until September 9, 2019 to file a response, failure to do so was seen as agreement with the Stipulation. Trust responded on September 19, 2019.
3. Tilletts and Trust were given additional time to file information regarding a split. On February 18, 2020, the parties filed proposed abstracts to split the two claims. On March 19, 2020, all parties had filed status reports stating the Court should file its Master's Report.
4. Claims 43P 33263-00 and 43P 33267-00 have identical places of use.
5. The parties agree to split these claims based on ownership and historical usage.
6. The corrected point of diversion and place of use are as follows:

Claims 43P 33263-00 and 43P 33267-00

OWNER: ROYCE & MARIAN J TILLET 1989 TRUST

POD

ID	QTR	SEC	TWP	RGE	COUNTY
1	SWSESW	14	9S	27E	CARBON
2	NWNESW	23	9S	27E	CARBON

POU

ID	ACRES	QTR	SEC	TWP	RGE	COUNTY
1	3	NENW	23	9S	27E	CARBON
2	15	SESW	23	9S	27E	CARBON

¹ After this case was consolidated, ownership update forms were filed updating ownership from Tillett Ranch to John and Lorretta Tillett.

3	11.3	NESW	23	9S	27E	CARBON
4	16.4	NWSE	23	9S	27E	CARBON
5	0.3	SWSE	23	9S	27E	CARBON
TOTAL: 46						

FLOW RATE for 43P 33263-00: 0.52 CFS
FLOW RATE for 43P 33267-00: 180.64 GPM

Claims 43P 30146976 and 43P 30146977

OWNER: LORETTA AND JOHN TILLET
POD

ID	QTR	SEC	TWP	RGE	COUNTY
1	NWNESW	23	9S	27E	CARBON ²
2	NWSWSE	23	9S	27E	CARBON

POU

ID	ACRES	QTR	SEC	TWP	RGE	COUNTY
1	0.5	SWNESW	23	9S	27E	CARBON
2	9.7	SENE	23	9S	27E	CARBON
3	12	NESW	23	9S	27E	CARBON
4	0.6	SWNWSE	23	9S	27E	CARBON
5	7	SESW	23	9S	27E	CARBON
6	21.2	SWSE	23	9S	27E	CARBON
7	2	SESWNW	23	9S	27E	CARBON
8	1	N2NWNE	26	9S	27E	CARBON
TOTAL: 54						

FLOW RATE for 43P 30146976: 0.61 CFS
FLOW RATE for 43P 30146977: 212.06 GPM

7. The claimed maximum acres irrigated for claim 43P 33268-00 was 70 acres. Tilletts wish to expand this to 94 acres based on historical usage. Tilletts provided aerial photographs from 8/30/1954 which show 92 acres within the claimed place of use. A sworn affidavit from Russell Radliff³ states the 92 acres from the aerial photo are consistent with field boundaries. Aff. July 22, 2019. The place of use is as follows:

ID	ACRES	GOV LT	QTR	SEC	TWP	RGE	COUNTY
1	18		SESE	35	9S	27E	CARBON
2	53		W2SW	36	9S	27E	CARBON
3	11	4		1	10S	27E	CARBON
4	10	3		1	10S	27E	CARBON

² In their proposed abstracts, Tilletts listed this POD twice. The Court assumes this was done in error, but parties are welcome to file a correction if the Court's assumption is incorrect.

³ Mr. Radliff is a water resource Specialist for WGM Group, Inc. and has worked in the water rights field for over 10 years. He also has experience working for DNRC and Wyoming State Engineers Office.

TOTAL: 92

8. Further review of the aerial photograph shows an additional point of diversion should be added to claim 43P 33268-00 in the NENWSE of Sec. 26, Twp. 9S, Rge. 27E.

9. Claims 43P 33269-00 and 43P 33270-00 also have identical places of use. The claimed maximum acres are the correct amount, but the place of use should be clarified to match historical use as follows:

ID	ACRES	GOV LT	QTR	SEC	TWP	RGE	COUNTY
1	10	3		1	10S	27E	CARBON
2	10	4		1	10S	27E	CARBON
3	35		N2NW	19	58N	95W	BIG HORN (WY)
4	5		SEnw	19	58N	95W	BIG HORN (WY)
5	15		SWNE	19	58N	95W	BIG HORN (WY)
TOTAL: 75							

10. Tilletts provided an aerial photograph dated 8/30/1954 showing the claimed place of use and Mr. Radliff stated the irrigated acres from the photo are consistent with current field boundaries. Aff. July 22, 2019.

11. The parties stipulate that these changes resolve issue remarks and objections.

CONCLUSIONS OF LAW

1. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. When resolving issue remarks, the 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.

2. 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.

3. The Montana Water Court may accept a settlement agreement that reduces or limits an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

4. 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.

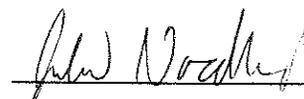
5. The documents provided by the parties meet the required burden of proof and provide sufficient evidence to support the proposed resolution of the objections and resolve the issue remark appearing on the claim above.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the issue remarks be removed and the corrections described in the Findings of Fact be applied.

Post decree abstracts of the water right claims addressed in this Master's Report are attached to confirm that the above corrections have been made in the state's water right record system.

DATED this 9th day of June, 2020.



Julia J. Nordlund
Senior Water Master

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