

Montana Water Court
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FILED

JUN 25 2020

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
ROCK CREEK BASIN (76E)
PRELIMINARY DECREE

CLAIMANTS: Gene J. Thompson; Teresa A. Thompson; John W.
Whitcombe; Judy C. Whitcombe; Fred J. Bischoff;
Patsy E. Bischoff; Jeffrey L. Govi; Piscatoribus Sacrum
LLC

76E-R3
76E 4600-00
76E 26937-00
76E 134501-00
76E 151490-00

OBJECTOR: United States of America (USDA Forest Service)

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. Because 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

FINDINGS OF FACT

1. Claims 76E 4600-00, 76E 26937-00, 76E 134501-00, and 76E 151490-00 were decreed with a DNRC issue remark stating they overclaim the same filed notice of appropriation. The claims were also decreed with remarks indicating elements of the claims were changed by the DNRC after issuance of the Temporary Preliminary Decree in Basin 76E.

2. The United States of America (USDA Forest Service) objected to claims 76E 4600-00, 76E 26937-00, and 76E 151490-00.

3. The claims were consolidated into Case 76E-R3 for proceedings.

4. On April 30, 2020, the parties in Case 76E-R3 filed a Stipulation. The Stipulation resolves the Objections and addresses the issue remarks. Pursuant to the Stipulation, the parties agree the following changes should be made to the claims in Case 76E-R60:

- The parties agree the flow rate of claim 76E 151590-00 should be reduced from 20.00 cubic feet per second (cfs) to 15.26 cfs
- The point of diversion for each claim should be the NESENW of Section 21, Township 7 North, Range 16 West, Granite County
- The following remark should be added to each claim:
THE PLACE OF USE IS IN HOMESTEAD ENTRY SURVEY NOS. 178 AND 286.

5. On June 1, 2020, a map was filed showing the Stipulated point of diversion.

CONCLUSION OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. The Water Court must address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

The Stipulation filed by the parties resolves the overfiled notice of appropriation issue identified by the DNRC as well as the Forest Service Objections. The other issue remarks appearing on the claims were notice-type issue remarks.

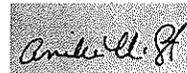
RECOMMENDATIONS

1. Claims 76E 4600-00, 76E 26937-00, 76E 134501-00, and 76E 151490-00 should be changed as shown in Finding of Fact No. 4.

2. The issue remarks should be removed from claims 76E 131534-00, 76E 131538-00, and 76E 131541-00.

Post Decree Abstracts of Water Right Claim are served with the Report to confirm that the recommended changes have been made in the DNRC's water rights database. The April 30, 2020 Stipulation and the June 1, 2020 map are attached to this Master's Report.

DATED this 25th day of June, 2020.

 Digitally signed
by Anika Stern

Anika M. Stern
Senior Water Master

Service via USPS Mail:

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