

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
SAGE CREEK BASIN (40G)
PRELIMINARY DECREE

* * * * *

CLAIMANT: State of Montana Board of Land Commissioners

CASE 40G-0046-R-2020

40G 215471-00

OBJECTOR: State of Montana Board of Land Commissioners

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 within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's 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. If you file an objection, you must serve 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

INTRODUCTION

Water right claim 40G 215471-00, owned by the State of Montana Board of Land Commissioners (TLMD), appeared in the Preliminary Decree for Sage Creek (Basin 40G) with issue remarks from the Montana Department of Natural Resources and Conservation's

(DNRC) preparation of the preliminary decree. Specifically, water right claim 40G 215471-00 received an issue remark stating: “THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 41P 40767-00, 40G 215471-00.” The remark appears to refer to interbasin-transfer water right claim 41P 40767-00, owned by the United States Bureau of Reclamation (Bureau). Water right claim 41P 40767-00 takes water from Basin 41P and uses it at over 1,000 places of use in Basins 41P, 40G, 40H, 40F, 40J, and 40T.

The Water Court stayed Water Court case 40G-0026-R-2020 pending resolution of issues regarding water right claim 41P 40767-00 in Water Court case 41P-0032-P-2017. Following the Water Court’s issuance of a Master’s Report in Water Court case 41P-0032-P-2017, which modified elements of water right claim 41P 40767-00, the Water Court lifted the stay in this case and asked TLMD to review the post-decree abstract and modified elements for 41P 40767-00 to determine whether they impacted resolution of the overlapping-place-of-use issue in the present case. The court specifically asked TLMD to file information, including recommendations for resolution of the overlapping-place-of-use issue remark.

On November 30, 2021, TLMD filed a Sworn Statement of Non-Interest with the Water Court.

The Water Court presently resolves the issue in this case.

ISSUES

1. *Whether a preponderance of the evidence supports dismissal of water right claim 40G 215471-00.*

APPLICABLE LAW

“The Montana [W]ater [C]ourt has a statutory obligation and the exclusive authority to adjudicate claims of existing water rights.” Rule 1(a), W.R.Adj.R. The Water Court resolves issue remarks before issuance of a final decree and may use information submitted by the DNRC, the statement of claim, and any other data obtained by the court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

A properly filed statement of claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628. The party seeking to overcome the prima facie status of a statement of claim, including a claimant objecting to his or her own claim, bears the burden of proof. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

DISCUSSION

1. *Whether a preponderance of the evidence supports dismissal of water right claim 40G 215471-00.*

The November 30, 2021 Sworn Statement of Non-Interest filed by TLMD states:

While this claimed water right uses water on lands belonging to the State of Montana (Trust Lands) . . . this is a BOR storage right based on future use that appears to have not been perfected. [TLMD] does not object to USA irrigation project claims on the basis of Pettibone, especially ones that have not been put to use.

Therefore, [TLMD] claims no interest in this water right claim.

The Water Court therefore dismisses water right claim 40G 215471-00 from adjudication.

RECOMMENDATIONS

This Water Master recommends the Water Court to dismiss water right claim 40G 215471-00 from adjudication. The court attaches a post-decree abstract to this Master’s Report to reflect dismissal of the water right claim.

Kirsa Shelkey
Water Master
she/her/hers

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Note: Service List Updated 12-6-21

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SAGE CREEK
BASIN 40G**

Water Right Number: **40G 215471-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Late Claim: B

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
 TRUST LAND MANAGEMENT DIVISION
 PO BOX 201601
 HELENA, MT 59620 1601

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: SAGE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.