

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

43D-0540-R-2021

December 9, 2021

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
CLARKS FORK YELLOWSTONE RIVER (BASIN 43D)
PRELIMINARY DECREE

CLAIMANT: Carbon County Belfry Cemetery Dist. 4

43D-0540-R-2021
43D 197740-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. 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

Statement of the case

The above captioned irrigation claim appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED FLOW RATE APPEARS TO EXCEED THE PUMP CAPACITY. AVAILABLE DATA SUPPORT A FLOW RATE OF 200 GPM.

Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

Montana law requires the Water Court to resolve issue remarks. Claimant, Carbon County Belfry Cemetery Dist. 4 ("District"), did not participate in the issue remark resolution process. The court set a show cause filing deadline for the District.

Issues

The Preliminary Decree abstract identifies a 4.46 CFS flow rate.

1. What is the historically accurate flow rate?
2. Is the flow rate issue remark resolved?

Findings of fact

1. On September 2, 2021, DNRC filed a Memorandum. The DNRC reported the District failed to participate in the issue remark resolution process.

2. DNRC recommended that the flow rate be reduced to the 200.00 GPM pump capacity identified by the issue remark.

3. An order set a filing deadline for the District to show cause why the claim should not be amended as recommended by DNRC to resolve the flow rate issue remark. The District failed to comply with this show cause filing deadline.

4. The historically accurate flow rate for irrigation claim 43D 197740-00 is 200.00 GPM.

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. 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. 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. If the Montana Water Court cannot resolve issue remarks based upon information in the claim file or information available to the Court, claimants shall be required to confer with the DNRC to attempt resolution of the issue remarks. Claimants shall file documentation to resolve the issue remarks, and the DNRC shall submit recommendations regarding disposition of the issue remarks. Section 85-2-248(5), MCA.

5. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. If a claimant fails to comply with an Order issued by the Court in its review of issue remarks, the Court may amend the claim to conform with information found in the claim file and information before the Court. Section 85-2-248(9)(a),(b), MCA.

Analysis

Issues 1 and 2 – flow rate; issue remark resolution

DNRC reviewed the claim file. DNRC recommended removal of the flow rate issue remark and a reduced flow rate based upon its review of information in the claim file resulting in the flow rate identified by the issue remark.

The District's failure to provide any evidence to address or resolve the flow rate issue remark leaves the claim file, the issue remark, and DNRC's review and recommendation as strong evidence of actual historical use.

Conclusions of law

Based on DNRC's recommendation, and the District's failure to comply with orders issued by the Water Master, the claim should be amended as recommended by the DNRC. The flow rate issue remark is resolved.

Recommendations

Irrigation claim 43D 197740-00 should be amended as follows to accurately reflect historical use.

<u>FLOW RATE:</u>	4.46 CFS	200.00 GPM
--------------------------	----------	------------

The flow rate issue remark should be removed from the claim abstract.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm implementation of the recommendations in the state's centralized water right record system.

Anna M. Stradley
Senior Water Master

Service via USPS Mail

Carbon County Belfry Cemetery Dist. 4
PO Box 10
Belfry, MT 59008-0010

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
CLARKS FORK YELLOWSTONE RIVER
BASIN 43D**

Water Right Number: 43D 197740-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CARBON COUNTY BELFRY CEMETERY DIST 4
PO BOX 10
BELFRY, MT 59008 0010

Priority Date: MAY 1, 1958

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 200.00 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT
PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 6.10

Source Name: CLARKS FORK YELLOWSTONE RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	5	SWSESE	22	8S	22E	CARBON

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: PUMP

Period of Use: APRIL 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	6.10		SE	22	8S	22E	CARBON

Total: 6.10