

Montana Water Court
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43D-0554-R-2021

December 7, 2021

Montana Water Court

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

CLAIMANTS: Rosemary D. Kisling; David H. Kisling

43D-0554-R-2021
43D 206449-00

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

Irrigation claim 43D 206449-00 appeared in the Preliminary Decree with issue remarks. 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.

The issue remarks on claim 43D 206449-00 concerned maximum acres irrigated, flow rate, period of diversion, period of use, and ownership.

On October 5, 2021, the DNRC filed a Memorandum recommending the withdrawal of claim 43D 206449-00. Enclosed with the DNRC Memorandum, in agreement with DNRC, was a Withdrawal of Water Right Claim 43D 206449-00 filed by claimants’ counsel, Reneé L. Coppock.¹

Issues

Should irrigation claim 43D 206449-00 be dismissed?

Finding of fact

Irrigation claim 43D 206449-00 should be dismissed.

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. Prima facie proof may be 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.

¹ Ms. Coppock filed a Notice of Appearance on behalf of claimants on August 24, 2021. The service list is updated accordingly.

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.

Analysis

The DNRC Database identifies Rosemary D. Kisling and David H. Kisling as the current claimants of water right claim 43D 206449-00. The Montana Cadastral Database located at <https://svc.mt.gov/msl/mtcadastral>, identifies Rosemary D. Kisling and David H. Kisling as the current property owners of the place of use identified by claim 43D 206449-00. Rosemary D. Kisling and David H. Kisling state claim 43D 206449-00 “is duplicative, irrigating the same exact place of use owned by Claimants as irrigated by Water Right No. 43D 15053-00.”

Conclusion of law

The Withdrawal of Water Right Claim 43D 206449-00 is properly filed.

Recommendation

Irrigation claim 43D 206449-00 should be dismissed.

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

Anna M. Stradley
Senior Water Master

Service via USPS Mail

Last Order:

Rosemary D. Kisling
David H. Kisling
PO Box 1046
Laurel, MT 59044

Service via Electronic Mail

**Reneé L. Coppock
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Service List Updated 11/24/2021

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

Water Right Number: 43D 206449-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Owners: DAVID H KISLING
PO BOX 1046
LAUREL, MT 59044

ROSEMARY D KISLING
PO BOX 1046
LAUREL, MT 59044

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: CLARKS FORK YELLOWSTONE RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS APPROPRIATION OF WATER TAKES WATER FROM THE CLARKS FORK YELLOWSTONE RIVER DRAINAGE (BASIN 43D) AND USES IT IN THE YELLOWSTONE RIVER, BETWEEN CLARKS FORK YELLOWSTONE & BIGHORN RIVER DRAINAGE (BASIN 43Q). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.