

Montana Water Court
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43D-0575-R-2021

December 17, 2021

Montana Water Court

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

CLAIMANTS: Patricia L. Hodges; Gregg J. Hodges

43D-0575-R-2021
43D 195947-00

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 195947-00 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 10.00 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. Claimants, Patricia L. Hodges and Gregg J. Hodges ("Hodges"), completed the issue remark resolution process.

Issues

The Preliminary Decree abstract for claim 43D 195947-00 identifies a 53.21 GPM flow rate.

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

Findings of fact

1. On October 7, 2021, the DNRC filed a Memorandum concerning the Hodges' attempt at resolution of the issue remark. Included with the DNRC Memorandum was the Hodges' Verified Motion to Amend claim 43D 195947-00.

2. The DNRC reported Hodges' proposed modification resolved the issue remark on the claim.

3. The historically accurate flow rate for claim 43D 195947-00 is 25.00 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. 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.

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. Settlement, including the documents filed by a claimant where the claimant is the only party, is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

4. 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.

5. 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

Issues 1 - 2 – flow rate and flow rate issue remark resolution

Statement of claim 43D 195947-00 identified a claimed flow rate of 10.00 miner's inches, or 112.00 GPM, and a pump capacity of 10.00 GPM. During claims examination DNRC reduced the flow rate to the DNRC's 17.00 GPM per acre guideline, resulting in

the 53.21 GPM flow rate currently identified by the Preliminary Decree abstract. The flow rate issue remark raised the question of whether the pump limited the beneficial use of claim 43D 195947-00 to 10.00 GPM.

DNRC reviewed the claim file, visited with co-claimant Gregg J. Hodges, and reviewed information provided by Mr. Hodges concerning the flow rate of his underground sprinkler system.

DNRC reports the same individual that filed statement of claim 43D 195947-00 filed other statements of claim within the same subdivided place of use also identifying a pump capacity of 10.00 GPM.¹ DNRC questions whether the individual that filed statement of claim 43D 195947-00 measured the flow rate of the pump or arbitrarily chose the 10.00 GPM flow rate as the capacity of the pump.

Based upon the evidence provided by Mr. Hodges, the underground sprinkler system utilizes 25.00 GPM, less than the 53.21 GPM identified by the Preliminary Decree abstract for claim 43D 195947-00. The DNRC recommended, and the Hodges agreed, the flow rate should be reduced to 25.00 GPM. DNRC recommends removal of the flow rate issue remark.

Conclusions of law

Based upon information in the claim file and before the court, the reduced flow rate proposed by the Hodges is historically accurate and resolves the flow rate issue remark.

Recommendations

Irrigation claim 43D 195947-00 should be modified as follows to accurately reflect historical use.

<u>FLOW RATE:</u>	53.21 GPM	25.00 GPM
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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

¹ See claim file 43D 197608-00.

implementation of the recommendations in the state's centralized water right record system.

Anna M. Stradley
Senior Water Master

Service via USPS Mail

Patricia L. Hodges
Gregg J. Hodges
10 Meadow Lane
Red Lodge, MT 59068

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

Water Right Number: 43D 195947-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GREGG J HODGES
10 MEADOW LN
RED LODGE, MT 59068

PATRICIA L HODGES
10 MEADOW LN
RED LODGE, MT 59068

Priority Date: JUNE 13, 1910

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 25.00 GPM

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

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 3.13

Source Name: UNNAMED TRIBUTARY OF WILLOW CREEK, WEST FORK

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		SENE	18	7S	20E	CARBON

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: PUMP

Subdivision: LAZY S L RANCHES TRACT/LOT: 9

Period of Use: MAY 1 TO SEPTEMBER 30

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	3.13		NENE	18	7S	20E	CARBON

Subdivision: LAZY S L RANCHES TRACT/LOT: 9

Total: 3.13