

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

CLAIMANT: Philip E. Schaefer

CASE 43D-0626-R-2021

43D 102745-00

43D102746-00

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 stock claims appeared in the Preliminary Decree with an issue remark noting the claims appear to be duplicates. 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.

No objections were filed to the claims. The Water Court is required to resolve issue remarks. Claimant failed to participate in the issue remark resolution process. The court set a show cause filing deadline for the claimant. Claimant did not respond by the deadline.

Issue

Are stock claims 43D 102745-00 and 43D 102746-00 duplicate claims?

Findings of fact

Stock claim 43D 102746-00 duplicates claim 43D 102745-00. Stock claim 43D 102746-00 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.

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. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), 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 terminate the claim to conform with information found in the claim file. Section 85-2-248(9)(d), MCA; *See also* Rule 22, W.R.Adj.R.

Analysis

Duplicate claim issue remark resolution

A first status conference was held September 30, 2021, to discuss resolution of the duplicate claim issue remark. Claimant failed to appear at the status conference.

An order set a filing deadline for claimant to show cause why claim 43D 102746-00 should not be dismissed to resolve the duplicate claim issue remark. Claimant also failed to comply with this filing deadline.

Claimant's failure to provide any evidence to address or resolve the duplicate claim issue remark leaves the claims examination and resulting issue remark as strong evidence of duplication.

Conclusion of law

Based upon the duplicate claim issue remark on the claims, information in the claim files, and the claimant's failure to comply with orders issued by the Water Master, claim 43D 102746-00 should be dismissed. The duplicate claim issue is resolved.

Recommendations

The elements of stock claim 43D 102745-00 accurately reflect historical use. No changes to the elements of the claim should be made. The duplicate claim issue remark should be removed from the abstract of claim 43D 102745-00.

Claim 43D 102746-00 should be dismissed. The duplicate claim issue remark on claim 43D 102746-00 is mooted by dismissal of the claim.

Post Decree Abstracts of Water Right Claim accompany 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

Philip E. Schaefer
10095 Dufferin Ave.
Riverside, CA 92503-6121

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

Water Right Number: 43D 102745-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PHILIP E SCHAEFER
10095 DUFFERIN AVE
RIVERSIDE, CA 92503 6121

Priority Date: DECEMBER 31, 1938

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF FIVEMILE CREEK

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		SW	1	6S	24E	CARBON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

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			SW	1	6S	24E	CARBON

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

Water Right Number: **43D 102746-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: PHILIP E SCHAEFER
 10095 DUFFERIN AVE
 RIVERSIDE, CA 92503 6121

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF FIVEMILE 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.