

ELECTRONICALLY FILED

Montana Water Court
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40N-0006-R-2021

September 15, 2021

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
ROCK CREEK, TRIBUTARY OF THE MILK RIVER BASIN (40N)
PRELIMINARY DECREE

CLAIMANTS: Laura J. Hudson; Elizabeth S. Verlanic

CASE 40N-0006-R-2021
40N 30118708

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 the Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations.

The above stamped date indicates the date the Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to the Master's Report must be filed within 10 days of the date of the Master's Report. Because the 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. This means your objection must be received no later than **13 days** from the above stamped date.

If you file an objection, you must mail 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

Domestic claim 40N 30118708 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 the claim concern an inadequate volume and the lack of the claim's inclusion in the previous Basin 40N decree.

Montana law requires the Water Court to resolve issue remarks. Claimants completed the issue remark resolution process.

Issues

The Preliminary Decree abstract identifies a volume of 3.25 AF.

1. What is the historically accurate volume?
2. Is the inadequate volume issue remark resolved?
3. Is the issue remark noting the claim's lack of inclusion in the previous Basin 40N decree resolved?

Findings of fact

1. Laura J. Hudson and Elizabeth S. Verlanic filed a Verified Motion to Amend Water Right Claim 40N 30118708. Laura J. Hudson and Elizabeth S. Verlanic proposed an increased volume.

2. DNRC filed a Memorandum concerning claimants' attempt at resolution of the inadequate volume issue remark on July 28, 2021. DNRC enclosed Laura J. Hudson's

and Elizabeth S. Verlanic's Verified Motion to Amend Water Right Claim 40N 30118708 with the Memorandum. DNRC reported the inadequate volume issue remark was resolved.

A preponderance of evidence establishes the following fact:

3. The historically accurate volume for claim 40N 30118708 is 9.00 AF.

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. If the settlement agreement expands or enlarges an element of a claim, the burden of proof must be met. If evidence does not meet the burden of proof, the element shall not be expanded or enlarged. Rule 17(b), W.R.Adj.R.

5. 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.

6. 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 and 2 – volume; issue remark resolution

The DNRC reviewed the claim file and the volume guidelines set by Water Right Claim Examination Rules and visited with co-claimant Elizabeth S. Verlanic. DNRC reported that domestic claim 40N 30118708 historically served 1 household and 3 acres of lawn and garden. Based upon the volume guidelines, the volume should be 9.00 AF. Laura J. Hudson and Elizabeth S. Verlanic agreed and proposed the volume should be increased to 9.00 AF. The DNRC recommended removal of the inadequate volume issue remark and modification of the volume based upon Laura J. Hudson's and Elizabeth S. Verlanic's proposed modifications to volume.

Conclusions of law

The inadequate volume issue remark, the information resulting in the issue remark, and Laura J. Hudson's and Elizabeth S. Verlanic's agreement with the issue remark overcomes, by a preponderance of evidence, the prima facie proof afforded the volume for claim 40N 30118708. The inadequate volume issue remark is resolved.

Issue 3 – notice issue remark resolution

Domestic claim 40N 30118708 appeared in the Preliminary Decree with the following issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 40N DECREE ISSUED 08/13/1985.

Water users were given the opportunity to review the claim and file an objection. The deadline to file objections has expired. No objections were filed against the claim.

Conclusion of law

The referenced notice issue remark served its purpose.

Recommendations

Domestic claim 40N 30118708 should be modified as follows to accurately reflect historical use.

VOLUME: 3.25 AF **9.00 AF**

The issue remarks 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

Laura J. Hudson
462 Tanita Court
Las Vegas, NV 89123

Elizabeth S. Verlanic
2533 Buffalo Horn Dr.
Laurel, MT 59044

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
ROCK CREEK, TRIBUTARY TO MILK RIVER
BASIN 40N**

Water Right Number: **40N 30118708** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LAURA J HUDSON
462 TANITA COURT
LAS VEGAS, NV 89123

ELIZABETH S VERLANIC
2533 BUFFALO HORN DR
LAUREL, MT 59044

Priority Date: SEPTEMBER 23, 1913

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 30.00 GPM

Volume: 9.00 AC-FT

Households: 1

Maximum Acres: 3.00

Source Name: GROUNDWATER

Source Type: GROUNDWATER

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		SWSWNE	16	36N	37E	VALLEY

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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	3.00		SWSWNE	16	36N	37E	VALLEY

Total: 3.00