

41H-0207-R-2020

September 24, 2021

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

Montana Water Court

CLAIMANT: Stanley L. Droge

OBJECTOR: City of Bozeman

NOTICE OF INTENT TO APPEAR: Four Corners County
Water & Sewer District

CASE 41H-0207-R-2020
41H 10064-00

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 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 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

INTRODUCTION

Water right claim 41H 10064-00, owned by Blacksmith Acres, LLC, appeared in the Preliminary Decree for the Gallatin River (Basin 41H). The City of Bozeman (City),

through attorney Peter Scott, objected to the claim's priority date. Consistent with an issue remark appearing on the claim's preliminary decree abstract, the objection states: "Priority pre-dates Decree No. 3850 dated October 7, 1909."

Four Corners County Water & Sewer District (Four Corners), though attorney Dana Pepper, filed a Notice of Intent to Appear (NOIA) in the case proceedings.

The Water Court consolidated the water right claim into Water Court case 41H-0207-R-2020 and set filing deadlines for the City to substantiate its objection and the parties to resolve the issue. On September 17, 2021, the parties filed a Stipulation with the court resolving the issue. On September 23, 2021, NOIA party Four Corners filed a conditional withdrawal of its objection indicating approval of the filed Stipulation resolved its concerns.

The Water Court presently resolves the issue in this case.

ISSUES

1. *Whether the Water Court approves the stipulation filed by the parties and modifies the claim's priority date from June 15, 1870, to October 8, 1909.*

APPLICABLE LAW

"The Montana [W]ater [C]ourt has a statutory obligation and the exclusive authority to adjudicate claims of existing water rights." Rule 1(a), W.R.Adj.R. The Water Court resolves issue remarks before issuance of a final decree and may use information submitted by the DNRC, the statement of claim, and any other data obtained by the court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

After the Water Court issues a preliminary decree in a basin, an objection period provides parties with an ownership interest in water or its use the opportunity to raise issues regarding their own water rights or other water rights in the preliminary decree. Section 85-2-233(1)(b); *Mont. Trout Unlimited v. Beaverhead Water Co.*, 2011 MT 151, ¶ 33, 361 Mont. 77, 255 P.3d 179.

A properly filed statement of claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is "more probable than not."

Hohenlohe v. State, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628. The party seeking to overcome the prima facie status of a statement of claim bears the burden of proof. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

In Water Court proceedings, the parties may file settlements stipulating the terms under which the parties contractually agree to resolve decree objections. A settlement may include a claimant's legally binding commitment to modify water right claims to resolve objections and issue remarks and an objector's agreement to withdraw objections conditioned upon the court's acceptance of the claim modifications. *E.g.*, *In re Pondera Cty. Canal & Reservoir Co.*, Case 41M-202, 2020 Mont. Water LEXIS 19 (Jan. 9, 2020).

Settlement agreements do not bind the Water Court and are subject to the court's review and approval. Rule 17(a), W.R.Adj.R. The court may rely on the stipulated facts and agreements of a settlement that are "not contrary to law, court rule, or public policy." *In re Marriage of Hill*, 265 Mont. 52, 58, 874 P.2d 705, 708 (1994). When a stipulation proposes modifications to water right claim elements, the court must evaluate each proposed modification to ensure the modification is supported by the evidence and within the court's authority to adjudicate. *In re Argabright*, Case 41I-265, 2014 Mont. Water LEXIS 9, (December 12, 2014) (affirming rejection of stipulation); *In re Dana Ranch Co.*, Case 41J-265, 2017 Mont. Water LEXIS 13 (rejecting stipulation). The water right adjudication rules require settlement agreements enlarging an element of a water right to meet the applicable burden of proof. Rule 17(b), W.R.Adj.R. The rules do not require settlement agreements reducing an element of a water right to meet the applicable burden of proof. Rule 17(c), W.R.Adj.R.

DISCUSSION

1. *Whether the Water Court approves the stipulation filed by the parties and modifies the claim's priority date from June 15, 1870, to October 8, 1909.*

Water right claim 41H 10064-00 is a sprinkler/flood-irrigation use claim for surface water direct from the West Gallatin River in Gallatin County, Montana. The claim's preliminary decree abstract currently indicates the water right's priority date is June 15, 1870. The City objected to the claimed priority date, stating: "Priority pre-dates Decree No. 3850 dated October 7, 1909."

The Stipulation signed and filed by the parties states:

2. The Parties agree that the priority date shall be modified to October 8, 1909, and all remaining elements on the Preliminary Decree abstract for claim 41 H 1 0064-00 shall remain as they appeared in the Decree.

3. Upon the Court's acceptance and application of this Stipulation, the City agrees to withdraw its objection to claim 41H 10064-00. The City further agrees that acceptance of this Stipulation should resolve and allow for removal of the priority issue remark.

Based on the court's review, the Stipulation is not contrary to law, court rule, or public policy. The Stipulation does not propose modifications enlarging any element of the water right claim. The Water Court approves the Stipulation filed by the parties and modifies the claim's priority date from June 15, 1870, to October 8, 1909. The City's objection and DNRC's issue remark are resolved. The issue remark is hereby removed.

RECOMMENDATIONS

This Water Master recommends the Water Court to remove the resolved issue remark and to modify the claim's priority date from June 15, 1870, to **October 8, 1909**.

The Water Court attaches a post-decree abstract for the water right claim to this Master's Report, as well as the Stipulation filed by the parties.

Kirsa Shelkey
Water Master
she/her/hers

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**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 10064-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BLACKSMITH ACRES LLC
6201 CHURCHILL RD
MANHATTAN, MT 59741 8360

Priority Date: OCTOBER 8, 1909

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 1.50 CFS

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: 160.00

Source Name: WEST GALLATIN 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		NENWSW	27	1S	4E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: LEWIS DITCH

Period of Use: APRIL 1 TO OCTOBER 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	160.00		NW	7	1S	4E	GALLATIN

Total: 160.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

10064-00

10065-00

41H-0207-R-2020

September 17, 2021

Montana Water Court

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STIPULATION

Claimant, Blacksmith Acres, LLC (formerly Estate of Stanley L. Droge), ("Blacksmith") and Objector, City of Bozeman ("City") enter into this Stipulation to resolve the City's objection to Blacksmith's claim 41H 10064-00.

RECITALS

- A. Pursuant to § 85-2-221, MCA, Stanley Lee Droge and Henery J. Droge filed a timely Statement of Claim on March 20, 1981, for water right claim 41H 10064-00 with the Department of Natural Resources and Conservation (DNRC).
- B. Claim 41H 10064-00 was decreed with one priority date issue remark stating that the priority date may be questionable as the claimed priority date predates the Case No. 3850, Gallatin County ("Bell Decree").
- C. Pursuant to § 85-2-233, MCA, the City filed a timely objection to claim 41H 10064-00 with the Montana Water Court. The City objected to the priority date element of the Droge claim.
- D. Claim 41H 10064-00 is owned solely by Blacksmith Acres, LLC as successor to claimant Stanley L Droge (deceased).

- E. Out of a mutual desire to resolve the City's objection without further litigation and in consideration of the mutual covenants in the Stipulation the parties agree as follows:

AGREEMENT

Blacksmith and the City (collectively the "Parties"), agree as follows:

1. The Recitals are incorporated as if fully set out herein.
2. The Parties agree that the priority date shall be modified to October 8, 1909, and all remaining elements on the Preliminary Decree abstract for claim 41H 10064-00 shall remain as they appeared in the Decree.
3. Upon the Court's acceptance and application of this Stipulation, the City agrees to withdraw its objection to claim 41H 10064-00. The City further agrees that acceptance of this Stipulation should resolve and allow for removal of the priority issue remark.

ADDITIONAL PROVISIONS

4. Each of the parties agrees to bear their own costs and attorney fees arising from the negotiation and execution of this Stipulation and in proceedings before the Montana Water Court regarding the above-captioned water rights.
5. Upon the entry of a Final Decree adopting the captioned water rights in accord with this Stipulation, the City's objection shall be deemed resolved and no further proceedings shall be necessary to address those objections, provided that the Final Decree does not expand or change other substantive elements of the claim.
6. This Stipulation is binding on all heirs, successors and assigns, representatives, and agents of the parties.
7. This Stipulation is the resolution of a disputed water right claim and is not to be construed as an admission against the interests of any parties.
8. This Stipulation resolves the disputed issues in this particular case and the terms set forth herein do not create any precedent for the treatment in litigation or settlement of any other issue, claim, or case.
9. Each of the parties entered into and executed this Stipulation voluntarily, in good faith, and without any fraud, misunderstanding, misrepresentation, overreaching, duress, or undue influence. The parties represent that the execution of this Stipulation is knowing and voluntary.

influence. The parties represent that the execution of this Stipulation is knowing and voluntary.

10. The parties hereto represent and affirm that the signatories to this Stipulation are legally authorized to bind the party to this matter.
11. Nothing in the Stipulation shall create any right, claim, cause of action, objection, defense, or other remedy in any person not a party to the Stipulation.
12. The parties agree that this Stipulation may be signed electronically and in counterparts, and all of such counterparts collectively, shall be construed as the equivalent of a single document.
13. The parties agree that this document embodies the entire Stipulation of the parties.

IT IS SO AGREED AND STIPULATED

BLACKSMITH ACRES, LLC

Dated: August 12, 2021

John T. Kamp Joyce Kamp
Print Name: JOHN T. Kamp Joyce Kamp
Its: Members

Dated: Sept 8, 2021

CITY OF BOZEMAN

Tim Cooper
Print Name: Tim Cooper
Its: Assistant City Attorney

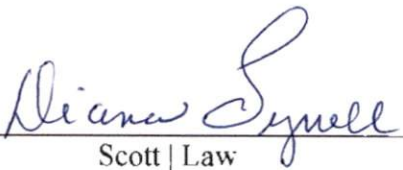
CERTIFICATE OF SERVICE

On this 11th day of September 2021, the undersigned caused the electronic original and true and correct copies of the foregoing filed in the above-identified Court, was served on the Water Court and via email and U.S. Mail where email is not available:

Montana Water Court (filed electronically)
% Water Master J. Brown

(Replaces Stan Droge):

watercourt@mt.gov	
<p>Susan B. Swimley Attorney and Counselor at Law 1807 W. Dickerson, Unit B Bozeman, MT 59715-1311</p>	<p>Dana E. Pepper Bina R. Peters River and Range Law, PLLC PO Box 477 Bozeman, MT 59771-0477 (406) 599-7424 office@riverandrangelaw.com dana@riverandrangelaw.com bina@riverandrangelaw.com</p>
<p>Walt Sales 3900 Stagecoach Trail Manhattan, MT 59741 (406) 282-7435 Waltsales4montana@gmail.com <i>Co-Personal Representative for the Estate of Stanley L. Droge</i></p>	



Scott | Law