

Montana Water Court
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ELECTRONICALLY FILED

43D-0365-R-2021

September 24, 2021

Montana Water Court

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

CLAIMANTS: Patrick R. Daley; Richard M. Daley

43D-0365-R-2021
43D 114687-00

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 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

The above captioned irrigation claim appeared in the Preliminary Decree with issue remarks concerning excessive volume, period of diversion, and the reservoir record.

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, Patrick R. Daley and Richard M. Daley ("Daleys") did not complete the issue remark resolution process. The court set a show cause filing deadline for the Daleys.

Issues

The Preliminary Decree abstract identifies a 4.00 AF reservoir capacity, a 720.00 AF volume, and a March 1 to November 1 period of diversion.

1. What are the historically accurate reservoir capacity, volume, and period of diversion?
2. Are the issue remarks resolved?

Findings of fact

1. Daleys received two extensions to attempt resolution of the issue remarks appearing on irrigation claim 43D 114687-00.

2. DNRC reported that co-claimant Patrick R. Daley contacted the DNRC, but the Daleys failed to complete the issue remark resolution process.

3. An order set a filing deadline for Daleys to show cause why the claim should not be amended as recommended by DNRC to resolve the issue remarks. Daleys failed

to comply with this show cause filing deadline.

4. The historically accurate reservoir capacity for irrigation claim 43D 114687-00 is 4.00 AF.

5. The historically accurate volume for irrigation claim 43D 114687-00 is 8.00 AF.

6. The historically accurate period of diversion for irrigation claim 43D 114687-00 is year-round.

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. This prima facie proof may be contradicted and 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. 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.

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 amend the claim to conform with information found in the claim file and information before the Court. Section 85-2-248(9)(a),(b), MCA.

Analysis

Issues 1 and 2 – reservoir capacity; volume, period of diversion; issue remark resolution

DNRC visited with co-claimant Patrick R. Daley. Patrick R. Daley confirmed the 4.00 AF reservoir capacity but identified a clerical error in the dam height identified by the reservoir record. Mr. Daley stated the dam height should be 13.00 feet, not 3.00 feet. Mr. Daley confirmed that the reservoir fills with seepage water from Leimbach Ditch and the seepage water is collected by the reservoir year-round. DNRC recommended removal of the issue remarks and modification of the reservoir record, volume, and period of diversion based upon the conversation with Patrick R. Daley.

Daleys' failure to provide any written agreement or evidence to address or resolve the issue remarks left DNRC's review of the claim and its conversation with Patrick R. Daley as strong evidence of actual historical use.

Conclusions of law

Based on DNRC's recommendations and the Daleys' failure to comply with orders issued by the Water Master, the claim should be amended as recommended by the DNRC.

The reservoir record, volume, and period of diversion issue remarks are resolved.

Recommendations

Irrigation claim 43D 114687-00 should be amended as follows to accurately reflect historical use.

<u>VOLUME:</u>	720.00 AF	8.00 AF
<u>PERIOD OF DIVERSION:</u>	MARCH 1 TO NOVEMBER 1	JANUARY 1 TO DECEMBER 31

Reservoir Record:

Dam Height:	3.00 FEET	13.00 FEET
Depth:	10.00 FEET	
Surface Area:	1.00 ACRE	
Capacity:	4.00 ACRE-FEET	

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

Patrick R Daley
18 ISTO Ln
Joliet, MT 59041

Richard M Daley
1814 Front St
Billings, MT 59101-8987

Courtesy Copy:

Richard M Daley
900 N Michigan Ave
Chicago, IL 60611-1542

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

Water Right Number: 43D 114687-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PATRICK R DALEY
18 ISTO LN
JOLIET, MT 59041

RICHARD M DALEY
1814 FRONT ST
BILLINGS, MT 59101 8987

Priority Date: APRIL 14, 1905

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 8.00 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 16.30

Source Name: SQUAW 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		NENWNW	22	4S	22E	CARBON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENWNW	22	4S	22E	CARBON

Diversion to Reservoir: DIVERSION # 1

Dam Height: 13.00 FEET

Depth: 10.00 FEET

Surface Area: 1.00 ACRES

Capacity: 4.00 ACRE-FEET

Period of Use: MARCH 1 TO NOVEMBER 1

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>
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1	16.30	NWNW	22	4S	22E	CARBON
Total:	16.30					