

Montana Water Court
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43D-0506-R-2021

September 15, 2021

Montana Water Court

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

CLAIMANT: PRC LLC

43D-0506-R-2021
43D 10216-00

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

PRC LLC irrigation claim 43D 10216-00 appeared in the Preliminary Decree with the following issue remarks:

USDA AERIAL PHOTOGRAPH NO(S). 179-024, DATED 09/26/1980, APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

THE CARBON COUNTY WATER RESOURCES SURVEY (1966) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

THE CARBON COUNTY WATER RESOURCES SURVEY (1946) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 24.93 GPM PER ACRE.

DITCH NAME MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

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. PRC LLC failed to complete the issue remark process. On July 13, 2021, an order set a show cause filing deadline for PRC LLC. On July 19, 2021, Patrick R. Connolly on behalf of PRC LLC filed a statement.

Issues

1. Should irrigation claim 43D 10216-00 be dismissed?
2. Are the issue remarks appearing on claim 43D 10216-00 resolved?

Findings of fact

1. On June 29, 2021, DNRC filed a Memorandum stating PRC LLC failed to complete the issue remark resolution process. DNRC made no recommendations concerning resolution of the issue remarks on the claim.
2. Based upon information in the claim file and the resulting zero acres irrigated issue remarks, an order set a filing deadline for PRC LLC to show cause why irrigation claim 43D 10216-00 should not be dismissed.
3. On July 19, 2021, Patrick R. Connolly on behalf of PRC LLC, filed a statement. The statement read, “We received your letter on July 13th regarding the water rights. I do not contest any of the findings.”
4. PRC LLC agreed the claim 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. 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.

Analysis

The DNRC Database identifies PRC LLC as the current claimant of water right claim 43D 10216-00. The Montana Cadastral Database located at <https://svc.mt.gov/msl/mtcadastral>, identifies PRC LLC as the current property owner of the place of use identified by claim 43D 10216-00. PRC LLC agrees it has no existing water right to claim.

Conclusions of law

Based on the issue remarks appearing on claim 43D 10216-00, the information resulting in the issue remarks, and PRC LLC's agreement with the foregoing, claim 43D 10216-00 should be dismissed. The dismissal of claim 43D 10216-00 moots the issue remarks appearing on the claim.

Recommendations

Irrigation claim 43D 10216-00 should be dismissed.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm dismissal of the claim in the state's centralized water right record system.

Anna M. Stradley
Senior Water Master

Service via USPS Mail

PRC LLC
1217 Clark Ave
Billings, MT 59102

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

Water Right Number: **43D 10216-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: **DISMISSED**

Owners: PRC LLC
1217 CLARK AVE
BILLINGS, MT 59102

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: WEST RED LODGE 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.