

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

43D-0515-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: Marcus E. Weast

43D-0515-R-2021
43D 6016-00

NOTICE OF FILING OF MASTER'S REPORT

You may file a written objection to the Report if you disagree with the Master's Findings of Fact, Conclusions of Law, or Recommendations; or if there are errors in the Report.

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

Irrigation claim 43D 6016-00 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 identify the following issues:

- zero acres irrigated in 1946 and 1966,
- fifty acres of irrigation in 1980, and
- flow rate may require modification based on resolution of the maximum acres irrigated issue.

Montana law requires the Water Court to resolve issue remarks. Marcus E. Weast completed the issue remark resolution process.

Issues

1. Should irrigation claim 43D 6016-00 be dismissed?
2. Are the issue remarks appearing on claim 43D 6016-00 resolved?

Findings of fact

1. On July 28, 2021, the DNRC filed a Memorandum recommending claim 43D 6016-00 should be withdrawn. Enclosed with the DNRC Memorandum was a Request to Withdraw Statement of Claim 43D 6016-00 signed by Marcus E. Weast.

2. Irrigation claim 43D 6016-00 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. 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

DNRC met with Marilyn Weast and Marcus E. Weast. The DNRC Memorandum explains that Marilyn Weast is Marcus E. Weast’s mother and that she has “intimate knowledge of this property and surrounding area.” DNRC included Marcus E. Weast’s Request to Withdraw Statement of Claim 43D 6016-00 with its Memorandum. The Request to Withdraw Statement of Claim 43D 6016-00 states, “This water right has historically been used, however it has not been used since the year 1970 to the best of Marilyn Weast’s knowledge.”

The DNRC Database identifies Marcus E. Weast as the current claimant of water right claim 43D 6016-00. The Montana Cadastral Database located at <https://svc.mt.gov/msl/mtcadastral>, identifies Marcus E. Weast as the current property owner of the place of use identified by claim 43D 6016-00.

Conclusions of law

The Request to Withdraw Statement of Claim 43D 6016-00 is properly filed. The dismissal of claim 43D 6016-00 moots the issue remarks appearing on the claim.

Recommendation

Irrigation claim 43D 6016-00 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

Marcus E. Weast
1401 Red Lodge Creek Rd
Red Lodge, MT 59068-9462

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

Water Right Number: **43D 6016-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: MARCUS E WEAST
 1401 RED LODGE CREEK RD
 RED LODGE, MT 59068 9462

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: 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.