

Montana Water Court
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43D-0544-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

CLAIMANTS: Clyde Boehm; Lisa Boehm

CASE 43D-0544-R-2021
43D 106845-00

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

Domestic claim 43D 106845-00 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 concerned nonperfection, and a 2016 amendment not processed at the time of filing. The 2016 amendment proposed modifying the purpose of domestic claim 43D 106845-00 to stock. The proposed amendment if implemented would result in claim 43D 106845-00 duplicating stock claim 43D 102692-00, also owned by claimants.

On July 29, 2021, claimants Clyde Boehm and Lisa Boehm filed a Withdrawal of Statement of Claim 43D 106845-00.

Issues

Should domestic claim 43D 106845-00 be dismissed?

Finding of fact

Domestic claim 43D 106845-00 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. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

Analysis

The DNRC Database identifies Clyde Boehm and Lisa Boehm as the current claimants of water right claim 43D 106845-00. The Montana Cadastral Database located at <https://svc.mt.gov/msl/mtcadastral>, identifies Clyde Boehm and Lisa Boehm as the current property owners of the place of use identified by claim 43D 106845-00. Clyde Boehm and Lisa Boehm agree they have no existing (pre-July 1, 1973) claim for domestic use as identified by claim 43D 106845-00.

Although not involved in these case proceedings, the multiple use information remark appearing on stock claim 43D 102692-00 should be removed due to the withdrawal of domestic claim 43D 106845-00. There is no longer a single water right used for multiple purposes. A copy of the updated abstract for claim 43D 102692-00 is included with this Master's Report.

Conclusion of law

The Withdrawal of Statement of Claim 43D 106845-00 is properly filed. The issue remarks appearing on claim 43D 106845-00 are mooted.

Recommendation

Domestic claim 43D 106845-00 should be dismissed.

The multiple use information remark appearing on stock claim 43D 102692-00 should be removed.

Post Decree Abstracts of Water Right Claim accompany this report to confirm the

dismissal of claim 43D 106845-00 and removal of the multiple use information remark from claim 43D 102692-00 in the state's centralized water right record system.

Anna M. Stradley
Senior Water Master

Service via USPS Mail

Clyde Boehm
Lisa Boehm
2650 County Rd 139A
Mandan, ND 58554-7804

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

Water Right Number: **43D 102692-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CLYDE BOEHM
 2650 COUNTY RD 139A
 MANDAN, ND 58554 7804

 LISA BOEHM
 2650 COUNTY RD 139A
 MANDAN, ND 58554 7804

Priority Date: JULY 1, 1925

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE
 CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A
 DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT
 HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR
 STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER
 ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING
 CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER
 SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF ELBOW 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	3	NENE	29	6S	21E	CARBON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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	NENE	29	6S	21E	CARBON

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

Water Right Number: **43D 106845-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: CLYDE BOEHM
 2650 COUNTY RD 139A
 MANDAN, ND 58554 7804

 LISA BOEHM
 2650 COUNTY RD 139A
 MANDAN, ND 58554 7804

Priority Date:

Type of Historical Right:

Purpose (Use): DOMESTIC

Flow Rate:

Volume:

Source Name: SPRING, UNNAMED TRIBUTARY OF ELBOW 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.