

43D-0557-R-2021

September 28, 2021

Montana Water Court
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Bozeman, MT 59771-1389
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1-800-624-3270
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Montana Water Court

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

CLAIMANTS: Deborah S. Bratton; Neil A. Bratton Jr.;
Deano Unlimited Family Trust; Bryan T.
Ebzery; Tiffany O. Ebzery; JRK Holdings
LLC; James J. Kane; Phyllis R. Karas;
Gregory B. Mohl; Virginia K. Mohl; Nabbem
LLC; Random Enterprises LLC; Ashley E.
Shanander; Deane L. Shanander; **Chelsea B.
Brajcich; Ryan P. Brajcich; Gretchen P.
Gillette; Kyle L. Gillette; Sherry L.
Weamer; Timothy J. Weamer**

CASE 43D-0557-R-2021
43D 17016-00

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

Irrigation claim 43D 17016-00 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 advise water users that the court modified the priority date during Temporary Preliminary Decree proceedings without providing notice to water users, advise water users that ditch names were modified by the DNRC, and identify an incorrect place of use legal land description.

Montana law requires the Water Court to resolve issue remarks. The priority date and ditch name issue remarks were resolved by information before the court. The following issue remark was not resolved through the objection process and there was not enough information in the claim file or before the court to resolve the issue remark. Pursuant to § 85-2-248(3), MCA, the court may first contact claimants for further information in an attempt to resolve an issue remark.

Therefore, a deadline was set for claimants to file information resolving the following issue remark.

THE CORRECT PLACE OF USE APPEARS TO BE N2SW SECTION 21 T7S R20E CARBON COUNTY, NOT S2SW SECTION 21 T7S R20E CARBON COUNTY.

An order granted one extension of the claimants' filing deadline. The order

granting the extension included language stating that claimants' failure to respond by the extended filing deadline would be considered claimants' agreement with the corrected place of use legal land description suggested by the issue remark. Claimants' did not respond by the filing deadline.

DNRC recently updated the ownership of claim 43D 17016-00. The caption and mailing list are updated to reflect the updated ownership. **If any of the new owners disagree with the Master's Report, they should file an objection to the report.**

Issues

The Preliminary Decree abstract identifies a place of use in the NW and S2SW of Section 21 and the S2SW of Section 16, all in Township 7 South, Range 20 East.

1. What is the historically accurate place of use?
2. Are the issue remarks resolved?

Finding of fact

A preponderance of evidence establishes the historically accurate place of use for claim 43D 17016-00 is in the NW and N2SW of Section 21 and the S2SW of Section 16, all in Township 7 South, Range 20 East.

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

Issues 1 and 2 – place of use; issue remark resolution

Statement of claim 43D 17016-00, the map attached to the statement of claim, and a pre-decree amendment located the place of use in Section 21, Township 7 South, Range 20 East in the NW and N2SW. During claims examination a clerical error occurred and the place of use in the N2SW was modified to the S2SW. Hence, the issue remark stating the point of diversion should be in the N2SW of Section 21, Township 7 South, Range 20 East. Claimants agreed with the place of use issue remark.

The priority date and point of diversion issue remarks instructed claimants and other water users that if no objections were filed to the modifications, the priority date and point of diversion would remain as they appear on the Preliminary Decree abstract. No one objected to the claim.

Conclusions of law

The place of use issue remark, the information resulting in the issue remark, and claimants' agreement with the issue remark confirms the accuracy of the prima facie proof afforded the place of use legal land description identified by statement of claim 43D 17016-00. The place of use issue remark is resolved.

The issue remarks concerning priority date and point of diversion served their notice purpose.

Recommendations

Irrigation claim 43D 17016-00 should be modified as follows to accurately reflect historical use.

PLACE OF USE:

<u>ACRES</u>	<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
135.70		NW	21	7S	20E	CARBON
70.50	N2SW	S2SW	21	7S	20E	CARBON
<u>50.30</u>		S2SW	16	7S	20E	CARBON
TOTAL: 256.50						

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

Deborah S. Bratton
Neil A. Bratton Jr.
22 Two Willow Ln
Red Lodge, MT 59068

Deano Unlimited Family Trust
16 Red Lodge Creek Rd
Red Lodge, MT 59068

Bryan T. Ebzery
Tiffany O. Ebzery
17 Marsh Dr.
Mill Valley, CA 94941-1022

JRK Holdings LLC
Nabbem LLC % JRK Holdings LLC
15 Two Willow Ln
Red Lodge, MT 59068-9478

Chelsea B. Brajcich
Ryan P. Brajcich
PO Box 1996
Red Lodge, MT 59068-1996

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1403 S Meadow Brook Court
Gillette, WY 82718-5668

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PO Box 664
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Gregory B. Mohl
Virginia K. Mohl
PO Box 2171
Red Lodge, MT 59068-2171

Random Enterprises LLC
28461 N 104th St
Scottsdale, AZ 85262

Ashley E. Shanander
Deane L. Shanander
4 Creek Hill Ln
Red Lodge, MT 59068

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

Water Right Number: **43D 17016-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:

CHELSEA B BRAJCICH
PO BOX 1996
RED LODGE, MT 59068 1996

RYAN P BRAJCICH
PO BOX 1996
RED LODGE, MT 59068 1996

DEBORAH S BRATTON
22 TWO WILLOW LN
RED LODGE, MT 59068

NEIL A BRATTON JR
22 TWO WILLOW LN
RED LODGE, MT 59068

BRYAN T EBZERY
607 CENTRAL AVE
SAN FRANCISCO, CA 94117

TIFFANY O EBZERY
607 CENTRAL AVE
SAN FRANCISCO, CA 94117

GRETCHEN P GILLETTE
1403 S MEADOW BROOK COURT
GILLETTE, WY 82718 5668

KYLE L GILLETTE
1403 S MEADOW BROOK COURT
GILLETTE, WY 82718 5668

JAMES J KANE
40 GARDNER PARK DR
BOZEMAN, MT 59715 9229

PHYLLIS R KARAS
PO BOX 664
RED LODGE, MT 59068 0664

GREGORY B MOHL
PO BOX 2171
RED LODGE, MT 59068 2171

VIRGINIA K MOHL
PO BOX 2171
RED LODGE, MT 59068 2171

ASHLEY E SHANANDER
4 CREEK HILL LN
RED LODGE, MT 59068

Owners:

DEANE L SHANANDER
4 CREEK HILL LN
RED LODGE, MT 59068

SHERRY L WEAMER
PO BOX 908
RED LODGE, MT 59068 0908

TIMOTHY J WEAMER
PO BOX 908
RED LODGE, MT 59068 0908

DEANO UNLIMITED FAMILY TRUST
16 RED LODGE CREEK RD
RED LODGE, MT 59068

JRK HOLDINGS LLC
15 TWO WILLOW LN
RED LODGE, MT 59068 9478

NABBEM LLC
% JRK HOLDINGS LLC
15 TWO WILLOW LN
RED LODGE, MT 59068 9478

RANDOM ENTERPRISES LLC
28461 N 104TH ST
SCOTTSDALE, AZ 85262

***Priority Date:** NOVEMBER 1, 1890

Type of Historical Right: DECREEED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.00 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 256.50

Source Name: WILLOW 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		NESENW	21	7S	20E	CARBON
Period of Diversion:	MAY 1 TO NOVEMBER 1					
Diversion Means:	HEADGATE					
Ditch Name:	TOOLE DITCH					
2		SENESEW	21	7S	20E	CARBON
Period of Diversion:	MAY 1 TO NOVEMBER 1					
Diversion Means:	HEADGATE					

3 SWNWSW 21 7S 20E CARBON

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: ZOOK AND RATTIN DITCH

4 SWSWSW 21 7S 20E CARBON

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: ZOOK AND RATTIN DITCH

Period of Use: MAY 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>
1	135.70		NW	21	7S	20E	CARBON
2	70.50		N2SW	21	7S	20E	CARBON
3	50.30		S2SW	16	7S	20E	CARBON
Total:	256.50						

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.

17015-00 17016-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

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AUTHORIZATION TO CHANGE POINT OF DIVERSION AND PLACE OF USE COMPLETED 10/25/1977. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE.