

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

43D-0577-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: W Holdings Liability Co.

NOTICE OF INTENT TO APPEAR: W Holdings Liability Co.

43D-0577-R-2021
43D 15885-00

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 Water Court issued two decrees for Basin 43D - the Temporary Preliminary Decree in 1993 and the Preliminary Decree in 2017. To prepare the Preliminary Decree for issuance, the Water Court ordered the Department of Natural Resources and Conservation ("DNRC") to standardize points of diversion, ditch names, and sources, and to add an issue remark to claims noting such modifications. W Holdings Liability Co. irrigation claim 43D 15885-00 appeared in the Preliminary Decree with such an issue remark noting ditch name was modified by the DNRC. The claim also received an issue remark concerning priority date.

Claimant W Holdings Liability Co. filed a notice of intent to appear to "participate in resolution of issue remarks."

Montana law requires the Water Court to resolve issue remarks and notices of intent to appear. Based upon information in the claim file and before the court, the issue remarks were resolved without any modification to the claim.

An order set a filing deadline for W Holdings Liability Co. to comment on the court's proposed resolution of the issue remarks without changes to the claim. The order included language stating that if no comments were filed by the deadline, the court would conclude W Holdings Liability Co. agreed no changes should be made to the claim, and the issue remarks should be removed from the claim.

W Holdings Liability Co. did not file any comment by the deadline.

Issues

1. Are the ditch name and priority date issue remarks resolved?
2. Are the notice of intent to appear party's concerns resolved?

Finding of fact

The ditch name and priority date identified by the Preliminary Decree abstract for irrigation claim 43D 15885-00 are historically accurate.

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 ditch name issue remark instructed claimant and other water users that if no objections were filed to the modification, the ditch name would remain as it appears on the Preliminary Decree abstract. No one objected to the ditch name and the concerns of W Holdings Liability Co. are resolved. The ditch name issue remark served its notice purpose.

The priority date issue remark notes the claim is a filed right on Volney Creek that predates a district court decree that includes Volney Creek. The record does not indicate why this claim was not included in Case No. 247, Carbon County. The priority date issue remark is not supported by evidence sufficient to overcome the prima facie proof afforded the priority date for the claim.

Conclusions of law

Information in the claim file and before the court resolves the ditch name and priority date issue remarks. The Preliminary Decree abstract identifies the historically accurate ditch name and priority date.

The concerns of the notice of intent to appear party, W Holdings Liability Co., are resolved.

Recommendations

Irrigation claim 43D 15885-00 accurately reflects historical use. No changes to the elements of the claim should be made.

The issue remarks should be removed from the claim abstract.

A Post Decree Abstract of Water Right Claim accompanies this Report to confirm removal of the issue remarks in the state's centralized water right record system.

Anna M. Stradley
Senior Water Master

Service via Electronic Mail

Jack G. Connors
Jacqueline R. Papez
Doney Crowley P.C.
PO Box 1185
Helena, MT 59624
(406) 443-2211
jconnors@doneylaw.com
jpapez@doneylaw.com
kheimbach@doneylaw.com
jhoffman@doneylaw.com

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

Water Right Number: 43D 15885-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: HOLDINGS, W LIABILITY CO
PO BOX 2138
RED LODGE, MT 59068

Priority Date: JUNE 15, 1901

Type of Historical Right: FILED

Purpose (Use): IRRIGATION
Irrigation Type: FLOOD

Flow Rate: 442.00 GPM

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: 26.00

Source Name: VOLNEY 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		SEWNNE	25	6S	18E	CARBON

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: BURNETT DITCH

Period of Use: APRIL 15 TO OCTOBER 15

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	26.00		E2SE	24	6S	18E	CARBON
Total:	26.00						