

Montana Water Court
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ELECTRONICALLY FILED

43D-0631-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: Sannes Family Limited Partnership

CASE 43D-0631-R-2021
43D 130344-00

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.

Irrigation claim 43D 130344-00 appeared in both decrees with issue remarks. Issue remarks result from DNRC claims examination. DNRC confirms the historical use of water right claims and identifies issues with claims. If DNRC cannot confirm some aspect of a claim, DNRC adds an issue remark to the claim.

The issue remarks state:

- 205.00 acres were irrigated in 1946,
- 165.00 acres were irrigated in 1966, and
- 215.00 acres were irrigated in 1980.

No objections were filed to the claim. Montana law requires the Water Court to resolve issue remarks.

Issue

Are the maximum acres irrigated issue remarks resolved?

Finding of Fact

The Preliminary Decree abstract of claim 43D 130344-00 identifies the historically accurate 215.00 maximum acres irrigated.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right or amended claim 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.

5. Judicial notice of law may be taken. Rule 202, M.R.Ev.

Analysis

Judicial notice of the DNRC Water Rights Claim Examination Manual is taken. DNRC utilizes contact points to guide whether the number of acres irrigated claimed versus the number of acres irrigated confirmed by DNRC during claims examination are within a margin of error that warrants further review.¹ If the examined acres fall within the contact points for the claimed acres, the DNRC accepts the acreage figure and does not contact the claimant, nor does the claim receive an issue remark.

The Temporary Preliminary Decree abstract and the Preliminary Decree abstract identify a 215.00-acre place of use based upon a pre-Temporary Preliminary Decree

¹ May 2013 DNRC Water Rights Claim Examination Manual, Ch. VII.D.2.e.

amendment. The contact points for 215.00 acres are 195.00 acres to 235.00 acres. The 205.00 acres DNRC confirmed in 1946 and 215.00 acres DNRC confirmed in 1980 fall inside the contact points range. The 1946 and 1980 maximum acres irrigated issue remarks do not raise an issue requiring resolution by the court.

The issue remark noting 165.00 acres of irrigation in 1966 is an outlier. The lower acreage falls between two higher acreages 20 years earlier and 24 years later. This outlier in the number of acres irrigated does not overcome the prima facie proof afforded the place of use identified by the pre-decree amendment.

Conclusion of law

The maximum acres irrigated issue remarks are resolved.

Recommendations

The elements of irrigation claim 43D 130344-00 accurately reflect 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 USPS Mail

Sannes Family Limited Partnership
c/o Ronald & Margaret Sannes
2927 Summer Wind Ln.
Highlands Ranch, CO 80129

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

Water Right Number: 43D 130344-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: SANNES FAMILY LIMITED PARTNERSHIP
% RONALD & MARGARET SANNES
2927 SUMMER WIND LN
HIGHLANDS RANCH, CO 80129

Priority Date: JUNE 8, 1969
Type of Historical Right: USE
Purpose (Use): IRRIGATION
Irrigation Type: SPRINKLER/FLOOD
Flow Rate: 5.35 CFS
Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT
PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 1 - HIGH
Maximum Acres: 215.00
Source Name: CLARKS FORK YELLOWSTONE RIVER
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		NWSENW	18	3S	24E	CARBON

Period of Diversion: MARCH 1 TO OCTOBER 31

Diversion Means: PUMP

2	6	SESWNW	18	3S	24E	CARBON
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Period of Diversion: MARCH 1 TO OCTOBER 31

Diversion Means: PUMP

Period of Use: MARCH 1 TO OCTOBER 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	24.00		NW	18	3S	24E	CARBON
2	103.00		SW	18	3S	24E	CARBON
3	52.00		NE	18	3S	24E	CARBON
4	33.00		SE	18	3S	24E	CARBON
5	3.00		SE	13	3S	23E	CARBON

Total: 215.00

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.

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