

Montana Water Court
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41N-0281-R-2022

November 4, 2022

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
WILLOW CREEK BASIN (41N)
PRELIMINARY DECREE

CLAIMANTS: C. F. Anderson Family Partnership;
Vicki Fey Schulz Family Partnership

CASE: 41N-0281-R-2022
41N 154791-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's 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. If you file an objection, you must serve 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

All water right claims that appeared in the Preliminary Decree for Willow Creek

(Basin 41N) were subject to “issue remarks” resulting from pre-decree examination by the DNRC, objections, and counterobjections.

Claim 41N 154791-00 was consolidated into Case 41N-0281-R-2022 to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 41N 154791-00 received the following substantive issue remark:

SOURCE NAME COULD NOT BE CORRECTED AS IT WAS CREATED BY THE WATER COURT. IT APPEARS FROM THE TOPOGRAPHICAL MAP FEY LAKES, THE SOURCE NAME SHOULD BE UNNAMED TRIBUTARY OF ECILIPSE CREEK, NORTH FORK.

2. On June 20, 2022, the Court consolidated the claim and set a filing deadline for the Claimants to respond if they did not agree that the suggested modification to the source element for claim 41N 154791-00 was historically accurate. Nothing was filed by the ordered deadline.

3. Claim 41N 154791-00 also received a notice-type issue remark during the DNRC’s claim reexamination.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the 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. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

8. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The information in the record is sufficient to resolve the above-listed issue remark appearing on the claim. Because the Claimants did not respond to the filing deadline, a preponderance of the evidence shows that the source element for claim 41N 154791-00 should be modified as described in Finding of Fact No. 1. This modification resolves the issue remark, and the issue remark should be removed from the claim.

2. The notice-type issue remark appearing on the claim served its notice purpose and should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

Eugene C. White
Water Master

Service via USPS Mail:

C. F. Anderson Family Partnership
223 Commons Way
Kalispell, MT 59901

Vicki Fey Schulz Family Partnership
139 Juniper Bend Dr.
Kalispell, MT 59901

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WILLOW CREEK
BASIN 41N**

Water Right Number: 41N 154791-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ANDERSON, C F FAMILY PARTNERSHIP
223 COMMONS WAY
KALISPELL, MT 59901

SCHULZ, VICKI FEY FAMILY PARTNERSHIP
139 JUNIPER BEND DR
KALISPELL, MT 59901

Priority Date: MARCH 5, 1904
Type of Historical Right: USE
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
***Flow Rate:** 283.00 GPM
***Volume:** 78.20 AC-FT

THE VOLUME QUANTIFICATION ON THIS CLAIM IS THE RESULT OF A STIPULATION FILED BY THE PARTIES WITH THE WATER COURT ON 05/20/1985. THE COURT HAS MADE NO DETERMINATION AS TO THE NEED FOR A VOLUME QUANTIFICATION ON THIS CLAIM AS PROVIDED FOR IN 85-2-234 (6) (B) (III) M.C.A.

Climatic Area: 4 - MODERATELY LOW
***Maximum Acres:** 17.00
***Source Name:** UNNAMED TRIBUTARY OF NORTH FORK ECLIPSE 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		SWSWNW	12	36N	2E	TOOLE	
Period of Diversion:	APRIL 1 TO NOVEMBER 1						
Diversion Means:	DITCH						
Period of Use:	APRIL 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	17.00		S2NE	11	36N	2E	TOOLE
Total:	17.00						

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.

154789-00

154791-00