

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Michael J. Braught; Shanna R. Braught; Rockin
S 7 HOA; Judy L. Brownell; Robert W.
Brownell; GBOB LLC

CASE 41H-0995-R-2023

41H 23599-00

41H 23604-00

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

Water right claims 41H 23599-00 and 41H 23604-00 appeared in the Preliminary Decree for the Gallatin River (“Basin 41H”) with issue remarks resulting from pre-decree examination by the Department of Natural Resources and Conservation (“DNRC”). To address the issue remarks, the Water Court consolidated the claim into case 41H-0995-R-2023.

FINDINGS OF FACT

1. Claim 41H 23604-00 appeared in the 41H Preliminary Decree with the following issue remark:

AN AMENDMENT WAS SUBMITTED ON 5/19/1995 REQUESTING TO AMEND THE POINT OF DIVERSION AND PLACE OF USE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

2. On May 19, 1995, Irving and Iris Snyder filed an Amendment to Statement of Claim to add two additional points of diversion. A map of the amended points of diversion was included in the filing.

3. Iris and Irving Snyder ended their ownership of claim 41H 23604-00 in 2008.

4. The Court set a filing deadline for the current owners of the claim to state if they wish to pursue the Snyder Amendment.

5. On June 5, 2023, Judy L. Brownell and Robert W. Brownell and GBOB LLC filed Status Reports. Both parties indicated they do not wish to pursue the Snyder amendment.

6. The Court gave the remaining Claimants a deadline of July 5, 2023 to assume the amendment request and stated if nothing was filed, the amendment would be dismissed and the case would be closed. Nothing further was filed.

7. Claim 41H 23599-00 appeared with issue remarks regarding DNRC modifications to the ditch name. The remark on the claim was intended to give notice to other water users of potential issues. No objections, notices of intent to appear, or counterobjections were filed.

8. The issue remarks served their purpose and will be removed.

CONCLUSIONS 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. This *prima facie* status may be overcome by a preponderance of the evidence showing that an element of the claim is incorrect. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33.

2. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248(2). The Court has 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.

3. When resolving issue remarks, the Water Court must weigh the issue remark and the information resulting in the issue remark against the claimed water right. Section 85-2-247(2), MCA. The Court is permitted to use information submitted by DNRC, 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.

4. If a claimant fails to comply with an order issued by the Water Court, the Court may, upon motion or its own initiative, issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R.

5. Brownells and GBOB LLC stated they did not wish to pursue the Snyder Amendment. The lack of response from the other Claimants combined with the lack of supporting evidence with the Snyder Amendment is a sufficient justification to dismiss the Amendment and close the case.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the Water Court make the above-specified changes. Post Decree Abstracts accompany this Report to confirm the changes have been made in the State’s centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

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