

Montana Water Court
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FILED
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CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41H-0558-R-2022
Nordlund, Julia
22.00

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

CLAIMANTS: Amy F. Davis; ~~Goertz Holding 350004 LLC;~~
Churchill IC LLC

CASE 41H-0558-R-2022
41H 16774-00

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
FINDINGS OF FACT

1. On January 25, 2023, this Court issued a Closing Order dismissing the objection in this case closing proceedings.
2. In a previous Order by the Court dated May 20, 2022, Hyalite Development Group LLC (“HDG”) was dismissed from the case after filing a Withdrawal of Interest in Claim 41H 16774-00. The order intended to remove HDG from the claim as well, but this failed to happen.
3. As a result, HDG remained as a co-owner on claim 41H 16774-00 after the Closing Order was issued.
4. On June 28, 2024, HDG filed a Motion for Relief from Judgment pursuant to Rule 60 Mont.R.Civ.P.
5. HDG once again requests to be removed as co-owner from claim 41H 16774-00. HDG also requests the acres owned by HDG be removed from the claim’s place of use.
6. HDG’s requests are summarized as follows:
 1. Remove the portion of the Place of Use that spans Hyalite’s property:
 - a. 1.30 acres in the NENWSW Section 34, T3S R4E;
 - b. 24.74 acres in the NESW Section 34, T3S R4E; and
 - c. 0.54 acres in the NESESW Section 34, T3S R4E.Total acres: 26.58 acres.
 2. Remove Hyalite as co-owner of Claim 41H 16774-00.
 3. Remove Hyalite’s geocode.
7. The Court does not have the authority to remove geocodes from the claims, but DNRC will be added to the service list and are hereby directed to do so.

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 proof may be

contradicted and 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.

2. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v. Burkhartsmeier et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master’s Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as “a relatively modest standard that the statutory criteria are ‘more probable than not’ to have been met.” *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

3. 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.

4. Montana Rule of Civil Procedure 60(a) provides:

The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the supreme court and while it is pending, such a mistake may be corrected only with the supreme court's leave.

5. It is appropriate to make a Rule 60(a) correction as the Court erred in failing to remove HDG’s ownership interest and property from the claim after it said it would do so.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above to correct claim 41H 16774-00.

A Post Decree Abstract is served with this Report to confirm the recommended corrections have been made in the state’s centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

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Note: Service List Updated 7-25-24

