

Montana Water Court
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FILED
12/09/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: Julie Cristiani
41D-6006-A-2024
Lambert, Kathryn
5.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
BIG HOLE RIVER BASIN (41D)

CLAIMANT: ABCW LLC

CASE 41D-6006-A-2024
41D 191123-00

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 to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. 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

On November 6, 2024 ABCW LLC filed a Verified Motion To Amend Water Right Claim for its claim 41D 191123-00 pursuant to section 85-2-233(6), MCA.

APPLICABLE LAW

The Montana Water Court has jurisdiction to review a motion to amend pursuant to

section 85-2-233(6), MCA.

Rule 15 M.R.Civ.P. restricts the scope of the amendments to the conduct, transaction, or occurrence set forth in the original pleading or, in other words, the “same set of operative facts as contained in the original pleading.” *Sooy v. Petrolane Steel Gas, Inc.*, 218 Mont. 418, 422-423 (1985). The requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

Notice must be published by newspaper if the requested amendments “may adversely affect other water rights.” Section 85-2-233(6)(a)(i), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to 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 the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including a claimant amending its own claim. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The changes requested in the Motion to Amend arise out of the same conduct, transaction, or occurrence specified on the original Statement of Claim, are based on the same operative facts specified in the Statement of Claim, and merely make more specific that which was already claimed on the original Statement of Claim.

2. The Temporary Preliminary Decree states that the maximum acres irrigated is 408.00 and that the place of use is:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
110.00	NE	29	4S	7W	MADISON
150.00	SW	29	4S	7W	MADISON
30.00	E2NE	31	4S	7W	MADISON
25.00	SWNE	31	4S	7W	MADISON
<u>93.00</u>	NW	32	4S	7W	MADISON
408.00					

The place of use should be:

<u>ACRES</u>	<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
260.00		29	4S	7W	MADISON

55.00	NE	31	4S	7W	MADISON
<u>93.00</u>	NW	32	4S	7W	MADISON
408.00					

3. The following remark should be added to the abstract of this claim noting the amendment:

THE PLACE OF USE LEGAL DESCRIPTION WAS AMENDED BY THE WATER COURT PURSUANT TO SECTION 85-2-233(6), MCA.

CONCLUSIONS OF LAW

1. The requested amendment does not adversely affect other water rights as it is a correction to the abstract which does not make any change to the actual historical use of the claimed right on the ground. Notice by publication of this amendment is not required. Section 85-2-233(6), MCA.

2. The requested amendment “merely makes more specific that which has already been alleged.” *Prentice Lumber Company v. Hukill*, 161 Mont. 8, 15 (1972).

3. The Motion to Amend is sufficient to contradict and overcome the prima facie claim as it appeared in the Temporary Preliminary Decree.

RECOMMENDATIONS

Based upon the above, this Master recommends that the Court grant the Motion to Amend this claim and make the changes specified in the Findings of Fact to correct the Temporary Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

ABCW LLC
7673 Caballero Dr
Sandy, UT 84093

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG HOLE RIVER
BASIN 41D**

Water Right Number: 41D 191123-00 STATEMENT OF CLAIM

Version: 6 -- POST DECREE

Status: ACTIVE

Owners: ABCW LLC
7673 CABALLERO DR
SANDY, UT 84093-6237

Priority Date: JUNE 3, 1874

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 24.14 CFS

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: 408.00

Source Name: BIG HOLE 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		SESWNE	36	4S	8W	MADISON

***Period of Diversion:** APRIL 15 TO NOVEMBER 10

Diversion Means: HEADGATE

Ditch Name: LARSON-NARANCICH DITCH

***Period of Use:** APRIL 15 TO NOVEMBER 10

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	260.00			29	4S	7W	MADISON
2	55.00		NE	31	4S	7W	MADISON
3	93.00		NW	32	4S	7W	MADISON

Total: 408.00

Remarks:

THE PLACE OF USE LEGAL DESCRIPTION WAS AMENDED BY THE WATER COURT PURSUANT TO SECTION 85-2-233(6), MCA.

AUTHORIZATION TO CHANGE PLACE OF USE, PURPOSE COMPLETED 12/11/2000. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE UPDATED IN THE CENTRALIZED RECORDS SYSTEM AFTER FINAL DECREE. SEE AUTHORIZATION TO CHANGE NO. 191122-01.

AUTHORIZATION TO CHANGE PLACE OF USE, PURPOSE, PLACE OF STORAGE COMPLETED 12/18/1996. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE UPDATED IN THE CENTRALIZED RECORDS SYSTEM AFTER FINAL DECREE. SEE AUTHORIZATION TO CHANGE NO. 191122-00.

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.