

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE RIVER BELOW POWDER RIVER - BASIN (42M)
INTERLOCUTORY DECREE

CLAIMANT: J Dale Enterprises LLC

CASE 42M-0044-I-2023
42M 30139302

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 October 20, 2023, then-Claimants Shye C. Boggs, Misti F. Boggs, and Jade Boggs were ordered to meet with a DNRC employee to address the following unresolved issue remarks decreed on claim 42M 30139302:

NO FLOW RATE HAS BEEN CLAIMED. THE FLOW RATE GUIDELINE FOR THIS PURPOSE IS 35 GPM.

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

THE CLAIMED PLACE OF USE COULD NOT BE IDENTIFIED FROM DATA SUBMITTED WITH THE CLAIM.

NO PRIORITY DATE WAS CLAIMED.

NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT WAS NOT SUBMITTED WITH THIS CLAIM.

2. On December 1, 2023, DNRC Water Resource Specialist Ryan Hartwell filed a Memorandum stating Shye C. Boggs, Misti F. Boggs, and Jade Boggs did not contact him. (Doc.* 2.00). Mr. Hartwell explained the history of claim 42M 30139302:

On July 1, 2019, a Claim 42M 30139302 was received by DNRC from Shye C. Boggs, Misti F. Boggs, & Jade Boggs for stock use of groundwater diverted by a well. Some key information was missing on the claim form. On item 5 there was no legal land description or geocode filled out for the point of diversion. Item 8 had no legal land description or geocode filled out for the place of use. Item 9 did not have a numerical value for "Flow Rate Used". Item 12 did not have information for "Period of Diversion". For Item 13, no "Type of Historic Right" was marked and no "Date of First Use" given.

The map submitted with the application also does not show the point of diversion and place of use clearly. The map appears to have state water right centroid locations with four centroids circled. See Exhibit 1. Two northern water rights represent 42M 134054-00 and 42M 140497-00. Both are for stock use from surface water diverted by a dam and are currently owned by J Dale Enterprises LLC. See Exhibit 1 text and highlighted in orange. The two southern rights represent 42L 140495-00 and 42L 140496-00. Both these rights are for surface use livestock direct from source and are not in the basin for this Decree. They are also currently owned by J Dale Enterprises LLC. See Exhibit 1 text and highlighted in orange. It appears that the land in question marked by the circled dots on the map, Section 25, S2 Section 24, Section 23, and Section 13 of T9N, R 58E, are all owned by J Dale Enterprises LLC, P.O. Box 591, Baker, MT 59313, transferred in Quit Claim Deed dated 7/14/2023, Book 104D, Page 48, Document 0109563, recorded on 7/14/2023.

Without additional information, Mr. Hartwell recommended claim 42M 30139302 be dismissed. Additionally, Mr. Hartwell identified J Dale Enterprises, LLC as a potential

* "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

new owner for claim 42M 30139302 and recommended J Dale Enterprises, LLC be allowed to address the issue remarks.

3. Another Order Setting Filing Deadline was issued on December 6, 2023. (Doc. 3.00). The Order alerted J Dale Enterprises, LLC of its possible interest in claim 42M 30139302 and directed it to contact the Glasgow DNRC to update ownership, if appropriate, and to address the issue remarks.

A deadline was set for J Dale Enterprises, LLC to determine if it is an owner, and if so, to work with DNRC to address the issue remarks and file notice with the Court. The Order indicated that if nothing were filed by J Dale Enterprises, LLC the claim may be dismissed. A deadline was set for then-Claimants Shye C. Boggs, Misti F. Boggs, and Jade Boggs to file evidence addressing the issue remarks. The Order indicated that if nothing were filed by the Boggs' the claim may be dismissed or transferred.

4. On January 12, 2024, Shye Coulter (fka Shye Boggs) filed an e-mail response, indicating the Boggs siblings are in the process of transferring their water rights into the name of J Dale Enterprises, LLC, and requesting additional time to meet with Mr. Hartwell. (Doc. 4.00).

5. An Order Extending Deadlines was issued on January 17, 2024; the Order re-set the deadlines in the initial Order Setting Filing Deadlines. (Doc. 5.00). The deadlines were subsequently extended at the requested of Shye Coulter.

6. On March 25, 2024, Mr. Hartwell filed a second Memorandum. (Doc. 6.00). Mr. Hartwell confirmed that claim 42M 30139302 has been transferred to J Dale Enterprises, LLC. Additionally, Mr. Hartwell explained that the claim was filed with various pieces of "key information" missing, such as: no point of diversion legal land description, no flow rate, no period of diversion, no type of historical right, and no priority date. Mr. Hartwell confirmed with Shye Coulter that the stock tanks described by claim 42M 30139302 "were first set in 1988." (See email attached to second Memorandum).

Because the stock tanks associated with claim 42M 30139302 were first used in 1988, the claim is not an existing right; Mr. Hartwell recommended the claim be

dismissed. Mr. Hartwell explained that he sent a 602 form to Ms. Coulter and is working with J Dale Enterprises, LLC to apply for a groundwater certificate. An Order Setting Filing Deadline was issued to determine if J Dale Enterprises agreed or disagreed that claim 42M 30139302 should be dismissed. The Order indicated that if nothing were filed by the deadline, claim 42M 30139302 would be dismissed. The Order included the following language:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS 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. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. The Water Court must address all issue remarks decreed on a claim. Section 85-2-248, MCA.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

RECOMMENDATION

1. Claim 42M 30139302 should be dismissed.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

J Dale Enterprises, LLC
P.O. Box 591
Baker, MT 59313

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, BELOW POWDER RIVER
BASIN 42M

Water Right Number: 42M 30139302 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: J DALE ENTERPRISES LLC
PO BOX 591
BAKER, MT 59313-0591

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.