

Montana Water Court
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FILED
10/16/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43O-0017-I-2024
Reynolds, Brooke
2.00

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
LITTLE BIGHORN RIVER - BASIN 43O
INTERLOCUTORY DECREE

CLAIMANTS: Debra G. Warren; Jack L. Warren

CASE 43O-0017-I-2024
43O 30129245

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

Claim 43O 30129245 appeared in the Interlocutory Decree for the Little Bighorn River (Basin 43O) with Montana Department of Natural Resources and Conservation (“DNRC”) issue remarks. The claim received no objections, counterobjections, or notices of intent to appear. Debra and Jack Warren own the claim. The Water Court consolidated the claim into Water Court Case 43O-0017-I-2024 to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 43O 30129245 is a domestic groundwater right from a well with a point of diversion and place of use in the NWSE of Section 19, T1S, R34E, Big Horn County.
2. The claim received the following substantive issue remark:
THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.
3. The Court set a filing deadline for the Claimants to file additional evidence to refine the location of the point of diversion. The Court stated that “[i]f nothing is filed by the deadline, the Court will assume that the point of diversion is accurately claimed and will remove the issue remark without any modifications to the point of diversion.” (Doc.¹ 1.00).
4. The Claimants did not file anything.
5. The claim also received the following issue remarks which the Court resolved in the consolidation order:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43O
DECREE ISSUED 03/25/2010.

AS OF 07/14/2022 , THIS WATER RIGHT APPEARS TO BE OWNED BY
JAMES KENNETH DAVID, PO BOX 308 , HARDIN , MT 59034-0308.

6. The first issue remark is for notice purposes. The second issue remark can be resolved through the DNRC by filing a Form 608. In the consolidation order, the Court

¹ “Doc.” Numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

sent notice to Mr. James Kenneth David to file a Form 608 with the DNRC if he is indeed an owner of the water right. (Doc. 1.00).

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 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. 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. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

5. Though the DNRC could not refine the point of diversion during its examination of the claim, there is no evidence in the claim file to suggest the location of the point of diversion is incorrect. The point of diversion issue remark does not overcome the prima facie proof of the claim and should be removed.

6. The remaining issue remarks have served their purpose of providing notice. Both issue remarks should be removed.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above.

A Post Decree Abstract of Water Right Claim 43O 30129245 is served with this Master's Report to confirm the recommendations have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Debra G. Warren
Jack L. Warren
c/o Debra G. Warren
5409 Bigfork Rd
Missoula, MT 59803-9515

(Potential Owner)

Kenneth David James
PO Box 308
Hardin, MT 59034-0308

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
LITTLE BIGHORN RIVER
BASIN 43O**

Water Right Number: 43O 30129245 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: DEBRA G WARREN
5409 BIGFORK RD
MISSOULA, MT 59803

JACK L WARREN
C/O DEBRA G WARREN
5409 BIGFORK RD
MISSOULA, MT 59803-9515

***Priority Date:** DECEMBER 31, 1956

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 0.50 AC-FT

Maximum Acres: 0.75

Source Name: GROUNDWATER

Source Type: GROUNDWATER

***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		NWSE	19	1S	34E	BIG HORN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

***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	0.75		NWSE	19	1S	34E	BIG HORN

Total: 0.75

Remarks:

POINT OF DIVERSION AND PLACE OF USE CERTIFICATE OF SURVEY NO. 298 , BIG HORN COUNTY.

THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE CROW INDIAN RESERVATION.