

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
TONGUE RIVER BELOW HANGING WOMAN CREEK - BASIN 42C
INTERLOCUTORY DECREE

* * * * *

CLAIMANTS: Mitchel R. Gundlach; Rachel A. Gundlach

OBJECTORS: Mitchel R. Gundlach; Rachel A. Gundlach

CASE 42C-0025-I-2024

42C 30134514

42C 30160123

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, conclusion 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

Mitchel R. Gundlach and Rachel A. Gundlach objected to the purpose of this domestic claim, stating that the Statement of Claim was for domestic and stockwater use. The Objection provides additional background information. On December 31, 2024 the claimant filed the Affidavit of Michael B. Blum and the Affidavit of Mitchell R. Gundlach providing additional evidence documenting the historical use of this claimed appropriation for stockwater. The Objection is viewable in the scanned documents for this claim in the state's centralized record system. The February 3, 2025 Order Setting Filing Deadline states:

It appears the number of animal units for the existing stockwater right for which the Court will recommend generating an implied claim, should be 84 animal units. It appears the Gundlach Certificate of Water Right 42C 30160807 (not in this Case) may cover the additional 91 animal units as increased by the Gundlachs during their ownership.

To confirm the claimants agree with the Court's determination that the number of animal units watered prior to July 1, 1973 should be 84, it is

ORDERED that the deadline for the claimants to file their written response is **March 4, 2025**. If nothing is filed by this date, the Court will conclude the claimants agree the number of animal units is 84 and proceed with issuing a Master's Report recommending generation of the requested implied stockwater claim.

Nothing was filed. The Affidavits and Order Setting Filing Deadline are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

“‘Implied Claim’ means a claim authorized by the water court to be separated and individually identified when a statement of claim includes multiple rights.” Rule 2(a)(33), W.R.C.E.R.

From 41P-108 “Circle S Ranch, Inc.” Order On Motion To Modify Claims 5-16-19, at 2019 Mont. Water LEXIS 8, page 5:

The Water Court recognizes implied claims in certain circumstances *In re Musselshell River below Roundup*, Case 40C-47, 1994 Mont. Water LEXIS 18, *78 (July 14, 1994). However, before the Court will recognize an implied claim, the claimant must prove that several factors exist. These include: (1) proof of two or more water rights in the original claim form or the material submitted with the claim form; (2) proof of historic use corroborating the implied claim; and (3) proof that recognizing the implied claim(s) will avoid causing a change to historic water use or increase the historic burden to other water users. *In re Foss*, Case

76HF-580, 2013 Mont. Water LEXIS 17, *32 (Jan. 31, 2013); *In re Martinell*, Case 41A-148, 2018 Mont. Water LEXIS 3, *6 (June 14, 2018). These standards assure that implied claims are not used to revive a claim that was forfeited as a matter of law by missing the filing deadline. Mont. Code Ann. § 85-2-226 (establishing conclusive presumption of abandonment of for claims not timely filed); *In re Climbing Arrow Ranch*, Case 41F-A19, 2019 Mont. Water LEXIS 1 (Mar. 6, 2019). The implied claim process also cannot be used to expand the elements of a statement of claim. *In re Eliasson Ranch Company*, Order Amending and Adopting Master's Report, Case 40A-115, 2004 Mont. Water LEXIS 2, *6 (Jun. 28, 2004) ("*Eliasson*").

"'Multiple Use' means the same appropriation used for more than one purpose by a single owner." Rule 2(a)(42), W.R.C.E.R. A multiple use remark should be added to the abstracts of multiple use claims. Rule 41, W.R.C.E.R. and *Order Addressing ReExamination*, entered December 14, 2012.

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 for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Interlocutory Decree states that the purpose of this claimed water right is DOMESTIC.

2. The copy of the Declaration Of Vested Groundwater Rights attached to the Statement of Claim states the water has been used since at least December 1, 1948 and the beneficial use is "Household and Livestock". The Gundlachs' objection states:

The water that has been put to beneficial use for household and livestock since December 1, 1948, is from the same point and means of diversion, a single well, and the place of use is all within the Tract 2 identified in the Claim.

3. The Affidavit of Michael B. Blum states that he has personal knowledge that John Todoroff and Dottie Todoroff owned the Gundlach farm in 1973; that Pete Todoroff (John Todoroff's father) owned the farm for many years prior to 1973; that the Todoroff family had a home and corrals near the well, and that he has personal knowledge that "in the years prior to

1973, John and Pete Todoroff utilized the well that is the subject of Claim No. 42C 30134514 for beneficial use in providing water to tanks which were used by livestock for water.”

4. The Affidavit Of Mitchell R. Gundlach, the claimant and a title examiner for Security Abstract & Title Company, includes various attached documents. He rightly concludes these documents confirm the claimed water right was used for domestic and stockwater purposes prior to July 1, 1973

5. Claim 42C 30134514 should remain as the claim for DOMESTIC use of the claimed right. Implied claim 42C 30160123 should be generated for the STOCKWATER use of the claimed right.

6. For claim 42C 30134514, no changes should be made to the elements of the claim. The following standard multiple use remark should be added to the abstract:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.
30134514 30160123

The abstract for this claim appeared in the Interlocutory Decree with the following remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41E DECREE ISSUED 02/28/2008.

This remark provides notice that the claim was not included in the Preliminary Decree. The remark does not raise an unresolved issue which needs to be addressed. The remark should be removed as having served its notice purpose.

7. The elements of implied claim 42C 30160123 should be the same as 42C 30134514 except the purpose should be STOCKWATER, the number of animal units should be 84, the number of households and maximum acres entries should be removed, and the same multiple use remark should also be added to this abstract.

CONCLUSION OF LAW

Statement of Claim 42C 30134514 and its attachments, plus the information provided in the various additional documents filed by the claimants, are sufficient to generate an implied claim as requested.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends

the Court generate implied claim 42C 30160123 and make the changes specified in the Findings of Fact to correct the Interlocutory Decree for this Basin. A Post Decree Abstract of Water Right Claim for each 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 Electronic Mail:

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Note: Caption Updated 4-14-2025