

Montana Water Court
P.O. Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

MONTANA WATER COURT
UPPER MISSOURI DIVISION
BOULDER RIVER, TRIBUTARY OF THE JEFFERSON RIVER
BASIN 41E
PRELIMINARY DECREE

CLAIMANT: Lockhart Meadows LLC

CASE 41E-0188-R-2024

41E 94306-00

OBJECTOR: Burnt Hollow Holdings, LLC

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

Burnt Hollow LLC objected to this claim. This claim appeared in the Preliminary Decree with the following remarks:

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE PRIORITY DATE APPEARS TO BE INCORRECT. IT APPEARS FROM INFORMATION IN THE CLAIM FILE THAT THE PRIORITY DATE SHOULD BE 12/31/1881.

On November 20, 2024 the parties filed a Stipulation And Settlement Agreement. The Stipulation And Settlement Agreement is viewable in the Court's FullCourt Enterprise case management system, document number 10. This settlement includes an expansion of the period of diversion and period of use which were not at issue. This request was deemed a motion to amend pursuant to section 85-2-233(6), MCA. The newspaper notice and personal notice requirements were met by claimant Lockhart Meadows LLC. See document numbers 11, 12, 13, 14, 15, 18, and 19 in the Court's FullCourt Enterprise case management system. No responses to the motion to amend were filed.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

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 for claimants amending their own claims. 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 Preliminary Decree states that the period of diversion and period of use are JUNE 1 TO SEPTEMBER 30. They should be APRIL 25 TO OCTOBER 5. The following remark should be added to the abstract of this claim noting the amendment: THE PERIOD OF DIVERSION AND PERIOD OF USE WERE AMENDED BY THE CLAIMANT ON 11/20/2024 PURSUANT TO SECTION 85-2-233(6), MCA.

3. As requested in the Stipulation And Settlement Agreement, the following remark should be added to the abstract for this claim: THIS RIGHT IS SUBJECT TO A PRIVATE AGREEMENT ON FILE WITH THE WATER COURT IN CASE 41E-0188-R-2024

4. According to the state's centralized record system (the DNRC database), the priority date issue remark was added in 2021 during the ReExamination of these claims. ReExamination is a very focused review limited to the specific items identified in the Montana Water Court Order Addressing ReExamination issued December 14, 2012. Priority date is not on the list of items for ReExamination. The priority date might be looked at to determine if there is a decree exceeded issue, over-filed notice of appropriation issue, or if a claim is a multiple use with another claim or claims - items identified for review during ReExamination - but there is no authority to conduct a second review of the priority date and add an issue remark. The time to add an issue remark concerning the priority date was during Verification or Examination, prior to issuance of the first Water Court Decree for the claim. The addition of this issue remark during ReExamination is unauthorized as it is beyond the scope of ReExamination. This issue remark should be removed without further proceedings.

5. The remark concerning point of diversion provides notice of the change made after completion of the Temporary Preliminary Decree proceedings and prior to issuance of 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.

CONCLUSIONS OF LAW

1. The notice requirements for a motion to amend claim specified in section 85-2-233(6), MCA, have been met. Although one of the newspapers did not publish the notice until after the requested dates, the notice was published shortly thereafter.

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

3. The Stipulation And Settlement Agreement – including the motion to amend – is sufficient to contradict and overcome the prima facie claim as it appeared in the 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 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 Electronic Mail:

William Driscoll
Ryan McLane
FRANZ & DRISCOLL, PLLP
WPD@franzdriscoll.com
Ryan@franzdriscoll.com
Office@franzdriscoll.com

Abigail R. Brown
Parsons Behle & Latimer
AbbyBrown@parsonsbehle.com
ecf@parsonsbehle.com

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER
BASIN 41E

Water Right Number: 41E 94306-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: LOCKHART MEADOWS LLC
502 LOWER VALLEY RD
BOULDER, MT 59632-9728

Priority Date: JANUARY 31, 1881

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.00 CFS

*Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

*Maximum Acres: 55.00

Source Name: INDIAN CREEK

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 | 2 | NENENW | 30 | 6N | 7W | JEFFERSON |

Period of Diversion: APRIL 25 TO OCTOBER 5

Diversion Means: HEADGATE

Period of Use: APRIL 25 TO OCTOBER 5

*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 | 55.00 | | N2 | 30 | 6N | 7W | JEFFERSON |

Total: 55.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

| | | | | | |
|----------|----------|----------|----------|----------|----------|
| 94274-00 | 94276-00 | 94293-00 | 94295-00 | 94297-00 | 94299-00 |
| 94301-00 | 94303-00 | 94306-00 | 94310-00 | 94318-00 | 94320-00 |
| 94322-00 | 94324-00 | | | | |

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.

94306-00

94307-00

THE PERIOD OF DIVERSION AND PERIOD OF USE WERE AMENDED BY THE CLAIMANT ON 11/20/2024 PURSUANT TO SECTION 85-2-233(6), MCA.

THIS RIGHT IS SUBJECT TO A PRIVATE AGREEMENT ON FILE WITH THE WATER COURT IN CASE 41E-0188-R-2024.