

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MADISON RIVER BASIN (41F)
PRELIMINARY DECREE

CLAIMANTS: Denicia A. Smith; Claude L. Smith, Jr.; Rita
Burk; John E. Burk, Jr.

CASE 41F-0094-R-2024
41F 30118533

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

Statement of the case

Domestic claim 41F 30118533 received the following issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41F DECREE ISSUED 07/25/1984.

THE FLOW RATE HAS NOT BEEN EXAMINED AS NO QUANTIFIED FLOW RATE WAS CLAIMED.

THE PLACE OF USE LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

NO PRIORITY DATE WAS CLAIMED.

THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

NO VOLUME HAS BEEN CLAIMED.

Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. Montana law requires the Water Court to resolve issue remarks.

The issue remarks appearing on domestic claim 41F 30118533 placed the validity of the claim at issue. Claimants were provided the opportunity to file evidence supporting the claim. Claimants failed to file any evidence supporting the claim.

Issue

Is domestic claim 41F 30118533 a valid existing water right?

Finding of fact

Domestic claim 41F 30118533 is not an existing water right.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right exempt use is prima facie proof of its content. Section 85-2-222(3), MCA. Prima facie proof may be overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. 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.

3. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

4. 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. Section 85-2-248(3), MCA.

5. For existing historical rights, the final decree must identify the owner, the amount of water appropriated, the priority date, the purpose, the place of use, the source, the point of diversion, the means of diversion, and the period of use. Section 85-2-234(6), MCA.

6. “‘Existing right’ or ‘existing water right’ means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973.” Section 85-2-102(13), MCA.

Analysis

Validity of domestic claim 41F 30118533

Domestic claim 41F 30118533 does not identify a priority date, flow rate, or

volume. Issue remarks question the type of historical right, source, and place of use legal land description. Claimants failed to provide evidence concerning any of these elements, leaving blank elements required by law.

Conclusions of law

Domestic claim 41F 30118533 fails to identify the required elements of an existing historical water right claim and the information required for final decree. The claim does not meet the definition of a valid existing water right for purposes of the adjudication.

Recommendation

Domestic claim 41F 30118533 should be dismissed.

A Post Decree Abstract of the Water Right Claim accompanies this report to confirm implementation of the recommendation in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Denicia A Smith
16072 Madison Frontage Rd
Three Forks MT 59752-0968

Claude L Smith Jr
John E. Burk Jr
16070 Madison Frontage Rd
Three Forks MT 59752-9494

Rita Burk
430 N. C St #7
Livingston MT 59047

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MADISON RIVER
BASIN 41F**

Water Right Number: 41F 30118533 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: JOHN E BURK JR
16070 MADISON FRONTAGE RD
THREE FORKS, MT 59752

RITA BURK
430 N. C ST #7
LIVINGSTON, MT 59047

CLAUDE L SMITH JR
16070 MADISON FRONTAGE RD
THREE FORKS, MT 59752-9494

DENICIA A SMITH
16072 MADISON FRONTAGE RD
THREE FORKS, MT 59752-0968

Priority Date:

Type of Historical Right:

Purpose (Use): DOMESTIC

Flow Rate:

Volume:

Source Name: RHEA CREEK

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.