

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
BIG HOLE RIVER BASIN (41D)

CLAIMANT: Crowsfoot LLC

OBJECTOR: SRI River Holdings LLC

DCERT-0002-WC-2023
41D 4735-00

Certified From:
Department of Natural Resources and
Conservation
Office of Administrative Hearings

**In the Matter of Change Application No.
41D- 30155185 by Crowsfoot LLC**

**ORDER APPROVING STIPULATION, MODIFYING CLAIM,
AND CLOSING CASE**

BACKGROUND

Crowsfoot LLC (“Crowsfoot”) owns water right claim 41D 4735-00. The Water Court most recently decreed this claim in the Temporary Preliminary Decree (“TPD”) for the Big Hole River Basin (Basin 41D) issued on April 6, 2007. The Court resolved issue remarks and objections in a Master’s Report filed on May 23, 2011, adopted by the Court on June 22, 2011, in Water Court case 41D-165.

The claim now is before the Water Court following certification from the Department of Natural Resources and Conservation (“DNRC”) in connection with an application to change the claim’s point of diversion. SRI River Holdings LLC (“SRI”) objected to the change. Following certification, the parties filed and the Court addressed

various motions. The parties have now entered into a Stipulation and Settlement Agreement (“Stipulation”) which they filed with the Court on February 6, 2025. (Doc. 50.00).

Under the terms of the Stipulation, Crowsfoot asks the Court to modify certain elements claim 41D 4735-00, including:

- Changing the means of diversion from a headgate to natural overflow;
- Modifying the flow rate from a numeric 1.52 cfs to a narrative remark stating:
NO FLOW RATE HAS BEEN DECREED FOR THIS NATURAL
OVERFLOW METHOD OF IRRIGATION;
- Reducing the maximum irrigated acreage from 34.00 acres to 12.80 acres, as depicted on a map accompanying the Stipulation;
- Reducing the annual periods of diversion and use from April 15 to September 30, to May 1 to July 1.

The terms of the Stipulation indicate these modifications will resolve the parties differences.

DISCUSSION

Settlement stipulations are contracts setting the terms that parties agree to resolve their dispute. In determining whether to accept a stipulation that includes proposed claim modifications proposed in the stipulation, the Court applies Rule 17, W.R.Adj.R. Under Rule 17(a), settlement stipulations are subject to Water Court review and approval when they resolve issues within the Court’s jurisdiction. *See also*, § 85-2-233(5)(b), MCA. The Court may rely on the terms of a stipulation as long as they are “not contrary to law, court rule, or public policy.” *In re Marriage of Hill*, 265 Mont. 52, 58, 874 P.2d 705, 708 (1994). When a stipulation proposes modifications to water right claim elements, the Court still must evaluate each proposed modification to ensure the modification is supported by the evidence and is consistent with what the Court may adjudicate and its obligation to resolve issue remarks. *In re Argabright*, Case 41I-265, 2014 Mont. Water LEXIS 9; *In re Dana Ranch Co.*, Case 41J-265, 2017 Mont. Water LEXIS 13; Section

85-2-248(3), MCA. The evidentiary standard is relaxed as to terms when a settlement stipulation proposes to reduce an element of a water right claim. Rule 17(c), W.R.Adj.R.

Although the procedural posture of these proposed claim modifications is somewhat unusual, the proposed modifications are within the scope of what the Water Court may approve. The Stipulation essentially is a motion to amend the claim. The issues that underlie the motion are different than what were addressed in case 41D-165. Each of the modifications propose reductions to claim elements. The acreage is less, the proposed diversion no longer requires an operational headgate and instead relies solely on natural overflow, which the parties documented in the summary judgment briefing. The periods of use and diversion also are reductions. Each modification falls within the relaxed evidentiary standard of Rule 17(c). Additionally, if framed as a motion to amend, the reductions are not likely to adversely affect any third party, so no additional notice is necessary under § 85-2-233(6)(a)(i).

ORDER

Therefore, it is ORDERED that the Stipulation is APPROVED. Claim 41D 4735-00 is modified consistent with the terms of the Stipulation. All proceedings before the Water Court for this case are CLOSED.

A post-decree abstract of the claim is included with this Order to confirm the modifications have been made to the State's centralized water rights record system.¹

ELECTRONICALLY SIGNED AND DATED BELOW.

¹ The modified abstract is version 4 because a version 3 evidently had been created in connection with the change proceeding.

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BIG HOLE RIVER
BASIN 41D**

Water Right Number: 41D 4735-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: CROWSFOOT LLC
PO BOX 111
TWIN BRIDGES, MT 59754-0111

Priority Date: JUNE 7, 1894

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: NO FLOW RATE HAS BEEN DECREED FOR THIS NATURAL OVERFLOW METHOD OF IRRIGATION.

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

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 12.80

Source Name: BIG HOLE RIVER

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		NWNWSE	1	4S	7W	MADISON

Period of Diversion: MAY 1 TO JULY 1

Diversion Means: NATURAL OVERFLOW

Ditch Name: SEYLER-HARVEY DITCH

Period of Use: MAY 1 TO JULY 1

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	12.80		NWNW	6	4S	6W	MADISON

Total: 12.80