

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: Patricia A. Zuelke; John P. Zuelke; Arthur B.
Zuelke

CASE 41F-0128-R-2024
41F 110348-00

OBJECTOR: United States of America (Bureau of Reclamation)

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

The United States of America (Bureau of Reclamation) filed an objection to the captioned claim stating, "It appears that this water right was either not perfected, or if perfected, was abandoned. Historical data, published in the 1961 Gallatin County Water Resources Survey, and aerial photography dated 1979, 1981, and 2021, does not support irrigation occurring as claimed. All elements of this water right are questionable."

The Water Master held a status conference to discuss the objection to the captioned claim. Claimants, Arthur B. Zuelke, John P. Zuelke, and Patricia A. Zuelke ("Zuelkes") failed to appear. The United States of America (Bureau of Reclamation) moved for sanctions pursuant to Rule 22, W.R.Adj.R. The court set a deadline for the United States of America (Bureau of Reclamation) to file evidence in support of its requested sanction.

On March 14, 2025, the United States of America (Bureau of Reclamation) filed its Response to Court Order. Pursuant to Rule 22, W.R.Adj.R., a deadline was set for Zuelkes to Show Cause why the claim should not be dismissed. Zuelkes did not respond by the deadline.

Issue

Should irrigation claim 41F 110348-00 be dismissed?

Finding of fact

Irrigation claim 41F 110348-00 should be dismissed.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right or an amended claim for Existing Water Right is prima facie proof of its content. 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 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. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. When a claimant fails to comply with an Order issued by the Water Court, including an order issued by a Water Master appointed by the Court, the Court upon its own initiative or upon motion, can among other actions: 1) modify the elements of the claim to conform with the information in the claim file, information obtained by the Court, or information included in an objection, or 2) terminate the claim. Rule 22, W.R.Adj.R.

Analysis

Objection resolution and requested sanction - dismissal of claim 41F 110348-00

The United States of America (Bureau of Reclamation) filed the Declaration of Kraig Van Voast in support of its request to dismiss claim 41F 110348-00. Mr. Van Voast declares, “My review of Water Right Claim No. 41F 110348-00 using the 1961 Gallatin County WRS, and U.S. Department of Agriculture aerial imagery dated 1976, 1981, 1995, 2005, and 2021, showed no irrigation occurring at the claimed place of use for Water Right Claim No. 41F 110348-00, during those time periods.” (*See* Mar. 14, 2025 United States’ Response to Court Order; Att. 1 Declaration of Kraig Van Voast ¶ 8.) The 1961 Gallatin County Water Resources Survey map and the U.S. Department of Agriculture aerial imagery dated 1976, 1981, 1995, 2005, and 2021 reviewed by Mr. Van Voast were included as Ex. 1 of Mr. Van Voast’s Declaration.

Based upon Mr. Van Voast’s review, irrigation has not occurred on the claimed place of use “since at least 1965.” (*See* Mar. 14, 2025 United States’ Response to Court

Order; Att. 1 Declaration of Kraig Van Voast ¶ 9.)

The United States' Response to Court Order may be viewed on the court's case management system, FullCourt Enterprise, at document sequence 3.00.

Conclusions of law

Based upon the United States of America (Bureau of Reclamation's) evidence, and the Zuelkes' repeated failure to comply with orders issued by the Water Master, the requested sanction, dismissal of claim 41F 110348-00, appears just. The dismissal of claim 41F 110348-00 resolves the United States of America (Bureau of Reclamation's) objection.

Recommendations

Irrigation claim 41F 110348-00 should be dismissed.

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

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail

Patricia A Zuelke
John P Zuelke
101 Carpenter Rd
Three Forks MT 59752-9730

Arthur B Zuelke
565 Madison Rd
Three Forks MT 59752-9430

Service via Electronic Mail

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Service List Updated 6/12/2025

\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Datavol)\Share\WC-BASIN FOLDERS\41F PD\Cases\128R\MR--41F-128R sjs.docx 6/16/25

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

Water Right Number: **41F 110348-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: ARTHUR B ZUELKE
 565 MADISON RD
 THREE FORKS, MT 59752-9430

 JOHN P ZUELKE
 101 CARPENTER RD
 THREE FORKS, MT 59752-9730

 PATRICIA A ZUELKE
 101 CARPENTER RD
 THREE FORKS, MT 59752-9730

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: MADISON RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.