

Montana Water Court
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FILED
03/12/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
42C-0051-I-2024
Lambert, Kathryn
4.00

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

* * * * *

CLAIMANTS: Brian E. Dice; Mary M. Dice

CASE 42C-0051-I-2024
42C 30122440

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

Brian E. Dice and Mary M. Dice claim 42C 30122440 appeared in the Interlocutory Decree with the following issue remark:

NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS 2.75 ACRE-FEET PER YEAR.

The issue remark was not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA. Under

Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence.

The October 15, 2024 Order Consolidating Case and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA set filing deadlines for the Montana Department of Natural Resources and Conservation [“DNRC”] and the claimants. On January 29, 2025 the DNRC Memorandum was filed stating that the claimants did not contact the DNRC, and recommending a volume quantification based on other claimed information. The October 15, 2024 Order states:

ORDERED that the deadline is **February 28, 2025** for the claimant to file a written response to the memorandum *if it disagrees with any recommendation in the memorandum*. If no written response is filed by this deadline, the Court will conclude that the claimant agrees with the memorandum recommendations.

Nothing was filed by the claimants; therefore, the Court concludes claimants Brian E. Dice and Mary M. Dice agree with the volume recommendation. These documents are viewable in the Court’s FullCourt Enterprise case management system.

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.

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 does not include a volume quantification. The volume should be 2.75 AC-FT. The volume issue remark should be removed as addressed and resolved.

2. The Interlocutory Decree also includes the following notice remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 42C DECREE ISSUED 02/28/2008.

This remark does not raise an unresolved issue which needs to be addressed. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The information provided by the DNRC Memorandum is sufficient to resolve the issue
remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court 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 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 USPS Mail:

Brian E. Dice
Mary M. Dice
21 Liscomb Rd
Volborg, MT 59351

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
TONGUE RIVER, BELOW HANGING WOMAN CREEK
BASIN 42C

Water Right Number: 42C 30122440 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: BRIAN E DICE
21 LISCOMB RD
VOLBORG, MT 59351

MARY M DICE
21 LISCOMB RD
VOLBORG, MT 59351

Priority Date: FEBRUARY 7, 1969
Type of Historical Right: FILED
Purpose (Use): DOMESTIC
Flow Rate: 7.00 GPM
Volume: 2.75 AC-FT
Households: 1
Maximum Acres: 0.50
Source Name: GROUNDWATER
Source Type: GROUNDWATER

*Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWSWNE	22	1S	47E	POWDER RIVER
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		WELL				
Period of Use:		JANUARY 1 TO DECEMBER 31				

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	0.50		NWSWNE	22	1S	47E	POWDER RIVER
Total:	0.50						

Remarks:

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.

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