

MONTANA WATER COURT, UPPER MISSOURI DIVISION
SMITH RIVER - BASIN 41J

CLAIMANT: Bluebird Spring Creek LLC

CASE 41J-6001-A-2025

41J 128612-00

41J 205746-00

ORDER ON MOTION TO AMEND

Bluebird Spring Creek LLC (“Bluebird”) sent a letter asking the Court to modify elements of two water right claims in the Smith River Basin (Basin 41J). The Court treats the letter as a motion to amend and opened this case to address it. For the reasons set forth in this Order, the Court denies the motion.

BACKGROUND

Bluebird owns claims 41J 128612-00 and 41J 205746-00. Both claims describe rights to use water from Spring Creek for irrigation use. Spring Creek is a tributary of the Smith River in Meagher County, north of White Sulphur Springs.

The Water Court issued the Preliminary Decree for the Smith River Basin (Basin 41J) on December 16, 2010. The Preliminary Decree included abstracts for claims 41J 128612-00 and 41J 205746-00. At the time of the Preliminary Decree, McGuire’s Spring Creek LLC (“McGuire’s”) owned both claims. The Preliminary Decree decreed and quantified claim 41J 128612-00 as a 5.0 cfs right with a November 27, 1894 priority date. Claim 41J 205746-00 was decreed and quantified as a 71.00 acre feet irrigation storage right with a June 1, 1936 priority date. Both claims were decreed with the identical 186.00 acre place of use.

Neither claim received issue remarks in the Preliminary Decree. The objection period closed on June 14, 2011. McGuire's filed timely self-objections to claim 41J 128612-00 based upon maximum acreage and place of use. No one filed counterobjections. The claim then was included on the objection list and no one filed notices of intent to appear.

Claim 41J 205746-00 did not receive any objections and was not included on the objection list.

After the objection periods closed, the Water Court addressed McGuire's self-objections in a Master's Report dated September 18, 2012. The Court adopted the Master's Report on October 15, 2012. Since that date, proceedings for both claims have been closed.

At some point Bluebird acquired the two claims and the property to which they are appurtenant.¹ On September 25, 2025, Bluebird filed a letter requesting the Court make the following modifications to both claims:

- Modify the point of diversion for claim 41J 128612-00 by adding a 9.72 acre-foot reservoir to the claim;
- Modify the place of use for claim 41J 128612-00 by adjusting the acreage allocated to various aliquot subparts without modifying the total acreage irrigated;
- Modify the place of use for claim 41J 205746-00 by adjusting the acreage allocated to various aliquot subparts without modifying the total acreage irrigated.

DISCUSSION

Motions to amend are authorized under § 85-2-233(6), MCA and Rule 10, W.R.Adj.R. If the Court determines the proposed modification may adversely affect other water users, the Court requires notice and the opportunity to object before approving the modification. When a claimant seeks to amend an element of their own water right, the claimant must prove by a preponderance of the evidence that the modification overcomes

¹ Because Bluebird evidently is the successor in interest to McGuire's, McGuire's is not included on the service list for this Order as it no longer has an interest in the claims or objection.

the prima facie status of the claim. Rule 19, W.R.Adj.R.; *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558.

The Water Use Act does not always prohibit post-objection period motions to amend, but they also are not allowed in all circumstances. When, as here, a motion to amend comes after the objection periods close, the Court looks to whether the motion is functionally a disguised late objection. *In re Lyndes*, Case 43B-0792-R-2022, 2023 Mont. Water LEXIS 878. This requires a claimant to provide evidence of a clerical error or other reason why the proposed modification could not have been sought during the objection period. This threshold inquiry is necessary because the Water Use Act sets hard deadlines for objection periods, with statutory provisions that provide an orderly process for providing notice to third parties. Section 85-2-233, MCA. Allowing unrestricted motions to amend after the objection period closes, even with notice to third parties, undercuts the preliminary decree objection process and is unfair to claimants and objectors who adhere to the deadlines set by statute and Court orders. *In re Garman Ranch Revocable Trust*, Case 39F-0005-I-2024, 2024 Mont. Water LEXIS 512.

Establishing procedural sideboards to post-objection period motions to amend is important to the overall efficiency of the statewide adjudication process. The Legislature charged the Water Court with responsibility to issue final decrees for the entire State of Montana, which is divided into four water divisions and eighty-five hydrologic basins. Each basin requires several decrees followed by objection and issue remark resolution periods. Allowing unrestricted motions to amend after an objection period closes would impede the progress of the adjudication.

The elapse of time since the Water Court decreed and closed these claims also disfavors Bluebird's proposed modifications. The Water Court issued the Basin 40J Preliminary Decree sixteen years ago in 2010. Bluebird's request does not explain why the modifications were not sought during the many intervening years since adjudication of these claims was completed. All issues and objections for all claims included in the Preliminary Decree have been resolved. Although Bluebird's amendment request is relatively simple, it forces the Court to divert judicial resources from active basins and

other claims to address issues that seemingly could have been timely raised during the objection period.

Motion to amend timing also is important because once the Court includes a water right claim in a decree, it becomes enforceable according to the decreed elements, as modified by resolution of issue remarks and objections. *Eldorado Coop Canal Co. v. Hoge*, 2016 MT 145, 383 Mont. 523, 373 P.3d 836; *Water Comm'r to Measure & Distribute Water on Beaver Creek Within Basin 411 v. Dodge*, 2026 MT 16, ¶ 14, 426 Mont. 184, 583 P.3d 938; § 85-2-227(1), MCA. Water rights on a source are administered relative to other water rights on the source. Once water rights are decreed and adjudicated, other water users are entitled to rely on the adjudicated elements of water rights on the source to provide a measure of predictability. Allowing liberal modification of post-decree water right claims, even if minor in nature, upends this certainty and the integrity of the adjudication process.

Bluebird characterizes its proposed amendments as “clerical” in nature. The Court is not convinced. A clerical error is something in the record that “misrepresent[s] the court's original intention.” *In re J Bar L Ranches, LLC*, Case 43BV-0352-R-2023, 2024 Mont. Water LEXIS 30. For example, if the legal description for a claim lists the wrong township, the Court may amend the claim to correct it at the request of a party. *E.g. Hoon v. Murphy*, Case WC-2017-02, 2020 Mont. Water LEXIS 367. Similarly, if a water right mistakenly lists the wrong source, the Court may correct it based on a motion to amend. *E.g. In re Haven*, Case 42L-6003-A-2022, 2022 Mont. Water LEXIS 441.

The Montana Supreme Court recently provided additional guidance on the parameters of clerical errors, using a water rights case as an example:

An example of a clerical error properly corrected by a district court is found in *State ex rel. Kruletz v. District Court of Fifth Jud. Dist. In and for Beaverhead County*, 110 Mont. 36, 98 P.2d 883 (1940). While deciding the severance of a water right and allocation of flow rate between two parties, the district court's judgment, rendered on June 30, 1894, erroneously listed the water right's priority date as October 15, 1884, when the correct priority date was actually May 1, 1882. The priority date was not disputed in the suit by either party; the dispute was over the division of water flow rate between the two co-owners. However, no one discovered the order's erroneous priority date until 1939. One of the water right owners applied for a nunc pro tunc order correcting the priority date, which the district

court granted. The Supreme Court affirmed the district court's action, because it corrected a factual discrepancy which had crept into the record, it did not actually change the effective priority date of the water right (which was determined by the original water decree), and it did not affect the substantive rights of the water right co-owner, because they shared the same priority date.

State v. Zielie, 2025 MT 90, ¶ 32, 421 Mont. 452, 568 P.3d 516 (internal pin citations omitted). The *Zielie* case went on to cite several examples of modifications that are judicial rather than clerical in nature, including those “generally implicating disputed matters in the case, modifying remedies available to the parties, changing the effect of already-issued orders, or impacting the substantive rights of the parties.” *Id.* ¶ 33. When measured against this backdrop, the Court concludes the modifications Bluebird requests are not clerical in nature and are beyond what the Court may authorize in a post-objection period motion to amend.

Bluebird also gave no explanation why the proposed amendments could not have been raised through the self-objection process. This lack of explanation is especially problematic for the proposed place of use modifications. The claim files for both claims include maps and memos that show the Department of Natural Resources and Conservation (“DNRC”) carefully examined the place of use based on historical aerial photographs. McGuire’s, Bluebird’s predecessor, also self-objected to the place of use description for claim 41J 128612-00 when it was apparent that a typographical error existed. This shows the place of use was scrutinized when the claim was actively adjudicated.

Bluebird’s request does not identify any errors committed during claim examination or the adjudication. Instead, Bluebird’s supporting documents indicate Bluebird remapped the place of use without explaining why. To the extent Bluebird now has more sophisticated mapping tools available to it, these technological advances are not a recognized reason to reopen and modify post-decree closed claims absent evidence demonstrating material mistakes in prior mapping. Though Bluebird does not ask the Court to expand the acreage, even reallocating it is a substantive change to an adjudicated record without a cognizable basis to do so.

Similar problems exist with the proposal to add the 9.72 acre-foot reservoir to claim 41J 128612-00. If this reservoir was present historically, it does not appear to have been part of the original claim, nor is it apparent in any of the DNRC examination materials in the claim file. Adding a reservoir to a claim after the claim has been adjudicated and closed is a substantive change, not a clerical error correction. As claim 41J 205746-00 indicates, McGuire's and DNRC evaluated reservoir storage on the source when the claims were filed and examined. There is nothing in the filings or examination materials to indicate the presence of another reservoir that was mistakenly missed when the claim was filed or adjudicated.

Finally, the Water Use Act does not recognize change in ownership as a reason to reopen and re-adjudicate elements of a closed claim. Were that so, each property transfer that includes appurtenant water rights would trigger the possibility of reopening the elements of those rights, which would be disruptive and unnecessarily impede the overall statewide adjudication. The Water Use Act does not identify ownership transfers as a basis to reopen closed claims except in the limited instance where there is a dispute over ownership. *See* § 85-2-424(9), MCA.

For these reasons, the Court concludes Bluebird's request fails to meet the standard for a post-objection period motion to amend.

ORDER

Therefore, it is ORDERED that Bluebird's request to modify claims 41J 128612-00 and 41J 205746-00 is treated as a motion to amend and the motion is DENIED and this case is CLOSED.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Bluebird Spring Creek LLC
PO Box 793
Gallatin Gateway, MT 59730-0793