

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

MONTANA WATER COURT
UPPER MISSOURI DIVISION
MADISON RIVER
BASIN 41F
PRELIMINARY DECREE

CLAIMANTS: Howard M. Sheridan; Brenda B. Sheridan

OBJECTOR: James M. Guyette

NOTICE OF INTENT TO APPEAR: James M. Guyette; Valley
Garden Land & Cattle
LLC

CASE 41F-0248-R-2026

41F 9257-00

41F 9258-00

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 have **13 days** from the service date of the notice of filing of this report to file a written objection or request an extension of the objection period. Rule 23, Water Right Adjudication Rules; Rule 6, Montana Rules of Civil Procedure. 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 9257-00 appeared in the Preliminary Decree with the following issue remarks:

A LATE OBJECTION HAS BEEN FILED TO THE PRIORITY DATE, FLOW RATE, VOLUME, PLACE OF USE AND MAXIMUM ACRES IRRIGATED OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

ON NOVEMBER 21, 2002 THOMAS MILLER FILED A SECOND LATE OBJECTION TO THE PRIORITY DATE, FLOW RATE, VOLUME, PLACE OF USE, AND MAXIMUM ACRES IRRIGATED. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

Irrigation claim 41F 9258-00 appeared in the Preliminary Decree with the following issue remarks:

A LATE OBJECTION HAS BEEN FILED TO THE PERIOD OF USE FROM "APRIL 01 TO NOVEMBER 04" TO "APRIL 01 TO NOVEMBER 01" OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

A LATE OBJECTION HAS BEEN FILED TO THE INCREASE IN FLOW RATE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

THOMAS MILLER FILED A SECOND LATE OBJECTION TO THE PRIORITY DATE, PLACE OF USE AND MAXIMUM ACRES IRRIGATED. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

ON NOVEMBER 21, 2002 THOMAS MILLER FILED A THIRD LATE OBJECTION TO PRIORITY DATE, PLACE OF USE, MAXIMUM ACRES, POINT OF DIVERSION, AND MEANS OF DIVERSION. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DITCH CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

THE CLAIMED SOURCE MAY BE QUESTIONABLE. BASED ON AVAILABLE DATA, THE SOURCE MAY BE SURFACE WATER FROM SOUTH MEADOW CREEK.

Issue remarks most often result from Department of Natural Resources and Conservation ("DNRC") claims examination. If claims examination cannot confirm an element of a claim based upon historical resources, or water right claim examination rules require identification of an issue, or a Water Court order requires identification of an issue, an issue remark is added to the claim. The court or DNRC may also add issue remarks providing some sort of notice to water users concerning a claim. The court ordered the addition of the above identified late objection issue remarks. Montana law

requires the Water Court to resolve issue remarks. Information before the court resolved the issue remarks.

James M. Guyette filed a late objection to claim 41F 9258-00, asserting that the period of use should be April 1 to November 1. Thomas Miller filed all the other late objections to these claims. James M. Guyette and Valley Garden Land & Cattle LLC filed notices of intent to appear for the captioned claims.

Issues

1. Are the issue remarks on each claim resolved?
2. Are the notices of intent to appear resolved?

Finding of fact

No modifications should be made to the captioned claims.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-222, 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.

Analysis

Issues 1 and 2 - issue remark resolution and notice of intent to appear resolution

The court held a status conference concerning the claims. Claimants Brenda B. Sheridan and Howard M. Sheridan and late objector Thomas Miller failed to appear at the status conference, and no party present wished to assume Mr. Miller's late objections. Accordingly, the Thomas Miller late objections were dismissed.

The parties present at the status conference stated that no changes should be made to the claims, especially noting that: 1) the period of use and period of diversion identified by irrigation claim 41F 9258-00 should remain April 1 to November 1, thereby resolving Mr. Guyette's late objection, and 2) DNRC added the point of diversion and source issue remarks on irrigation claim 41F 9258-00 in error.

On the review abstract in claim file 41F 9258-00, DNRC questions whether the point of diversion could be from South Meadow Creek via the James Gordon Ditch. Statement of claim 41F 9258-00 identified Birch Creek as its source and the point of diversion for an unnamed ditch in the SESENW of Section 35, Township 4 South, Range 2 West, Madison County. Attached to and in support of statement of claim 41F 9258-00 was a map from the Madison County Water Resources Survey (1954) ("Madison County WRS") marking the point of diversion location on Birch Creek to the west of the James Gordon Ditch. A Warranty Deed dated June 15, 1936, attached to and in support of statement of claim 41F 9258-00 includes the place of use legal land description for claim 41F 9258-00. While the Warranty Deed mentions decreed rights for South Meadow Creek, it clearly states, "This deed is intended to include any and all water rights from what is designated as Birch Creek, which passes through the above land and near the buildings thereon." The prima facie statement of claim and its attachments indicate that DNRC's questions do not reflect the historical use of claim.

Conclusions of law

No modifications should be made to the claims resulting in the resolution of Mr. Guyette's late objection to claim 41F 9258-00, and the resolution of the concerns of the notice of intent to appear parties for both claims.

Resolution of the James M. Guyette late objection and the dismissal of the Thomas Miller late objections to each claim resolve the late objection issue remarks appearing on each claim.

Upon review of claim file 41F 9258-00 and the Madison County WRS, it appears the point of diversion and source issue remarks were placed upon the abstract of irrigation claim 41F 9258-00 in error.

Recommendations

No modifications should be made to claims 41F 9257-00 and 41F 9258-00.

The issue remarks should be removed from the claim abstracts.

Post Decree Abstracts of Water Right Claim accompany this report to confirm removal of the issue remarks in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

Brenda B Sheridan
Howard M Sheridan
842 Cal Cove Dr
Fort Myers FL 33919

Service Via Electronic Mail:

Ryan K. Mattick
Mattick Law Firm, P.C.
ryan@matticklawfirm.com
(Atty for: James M. Guyette)

Rick C. Tappan
Tappan Law Firm, PLLC
rtappan@tappanlawfirm.com
office@tappanlawfirm.com
(Atty for: Valley Garden Land & Cattle
LLC)

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

Water Right Number: 41F 9257-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: BRENDA B SHERIDAN
842 CAL COVE DR
FORT MYERS, FL 33919

HOWARD M SHERIDAN
842 CAL COVE DR
FORT MYERS, FL 33919

Priority Date: JANUARY 1, 1920

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 30.00 GPM

Volume: 2.00 AC-FT

Households: 1

Maximum Acres: 0.50

Source Name: BIRCH CREEK

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		NENWSW	35	4S	2W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

Period of Use: JANUARY 1 TO DECEMBER 31

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	0.50		NENESW	35	4S	2W	MADISON

Total: 0.50

