

FILED

NOV 14 2016

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
RED ROCK RIVER BASIN (41A)

CLAIMANTS: Evan V. Huntsman; Florence M. Huntsman;
Huntsman Ranch Co.; Evon W. Huntsman Family LLC

OBJECTOR: Huntsman Ranch Co.; Evon W. Huntsman Family LLC

ON MOTION OF THE MONTANA WATER COURT

CASE 41A-21
41A 94902-00
41A 94904-00
41A 94905-00
41A 94911-00
41A 94915-00
41A 94943-00
41A 164799-00
41A 215706-00

**FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND
ORDER CLOSING CASE**

An evidentiary hearing in case 41A-21 was held July 27, 2016. Chief Water Judge Russ McElyea presided. Counsel for Huntsman Ranch Company and Evon W. Huntsman Family LLC (Huntsman), William A. Hritsco, was present. Evon W. Huntsman and Jean Huntsman were also present. Mr. Huntsman was sworn and provided testimony. The Court being fully advised makes these Findings of Fact and Conclusions of Law and issues its Judgment and Order.

FINDINGS OF FACT

1. A Master's Report was filed in case 41A-21 on November 13, 2015. Due to counsel's failure to timely act in response to the Court's deadlines, the Water Master made findings and conclusions based on the record before the Court.

2. The Water Master made changes to Statement of Claim 41A 94915-00 and dismissed Statement of Claim 41A 94943-00.

3. On December 16, 2015, this Court issued its Order Amending and Adopting Master's Report, adopting the Water Master's recommendations with respect to claims 41A 94915-00 and 41A 94943-00.

4. Huntsman filed a Rule 60(b), M. R. Civ. P. motion to partially set aside the Court's December 16, 2015 Order as it related to claims 41A 94915-00 and 41A 94943-00.

5. On June 8, 2016, the Court granted Huntsman's Rule 60(b) motion, under the equitable provisions of Rule 60(b)(6), M. R. Civ. P., and ordered that an evidentiary hearing be held on Huntsman's objections to claims 41A 94915-00 and 41A 94943-00.

Claim 41A 94915-00

6. Claim 41A 94915-00 appeared in the Preliminary Decree for Basin 41A with one issue remark regarding ownership based on pre-decree examination by DNRC. Huntsman Ranch Company filed an objection to the claim regarding flow rate and maximum acres.

7. Evan V. Huntsman and Florence M. Huntsman, both deceased, are still listed as the owners of claim 41A 94915-00. According to Huntsman, the actual owner of the right is Huntsman Ranch Company. Huntsman Ranch Company is instructed to update ownership of the claim with the DNRC.

8. Claim 41A 94915-00 is a filed irrigation claim for waste and seepage water. The Statement of Claim for water right 41A 94915-00 states that the irrigation claim is for use on 64 acres in Section 3, T13S, R9W with a claimed flow rate of 3 CFS.

9. Claim 41A 94915-00 appeared in the Preliminary Decree for Basin 41A with no flow rate. According to a letter from the DNRC dated February 13, 2014, the wrong criteria was followed in reviewing claims in Basin 41A, resulting in flow rates being erroneously removed from waste and seepage claims. 41A 94915-00 Claim File. On April 25, 2014, claim 41A 94915-00 was called in on motion before the Court, along with other waste and seepage claims in Basin 41A, to determine whether flow rates should have been retained. The DNRC made recommendations to the Water Court concerning each of the claims called in on motion. The DNRC recommended that claim

41A 94915-00 be decreed with a flow rate of 2.42 CFS and a remark stating, “The flow rate of this claim has been reduced to the guideline of 17 gpm per acre. The flow rate may be contested by proper objection.” This recommendation was based on DNRC’s belief that claim 41A 94915-00 is for controlled subirrigation and waste and seepage.

10. Mr. Huntsman testified at hearing that, at least since his family’s acquisition of the place of use for this claim in 1964, the waste and seepage from irrigation of lands south of Claimant’s property (now called the “Buhler Ranch”) collects in a drain ditch which traverses the entirety of Section 14, T13S, R9W. The flow is uncontrolled. There are no check dams, headgates or other control structures along the course of the drain ditch. Mr. Huntsman asserted that no specific flow rate should be decreed for this claim because it is for uncontrolled waste and seepage water. The Court finds that claim 41A 94915-00 is a claim for uncontrolled waste and seepage water and therefore should not be decreed with a flow rate.

11. The Statement of Claim for claim 41A 94915-00 identified a place of use consisting of 64 acres. Mr. Huntsman testified that this claim is supplemental to claim 41A 94905-00. Claim 41A 94905-00 is a direct flow claim from the Red Rock River, through the Crawford Diversion and Ditch. Mr. Huntsman testified that the flows under claim 41A 94905-00 and claim 41A 94915-00 join and are carried by the Crawford Ditch to the same place of use, which consists of 270 acres.

12. Claim 41A 94905-00 was not the subject of the June 8, 2016 Rule 60(b) Order. However, the evidence presented during these proceedings established that the legal description of the place of use for claim 41A 94905-00 needs correction. The place of use for claims 41A 94905-00 and claim 41A 94915-00 will both be changed to reflect the evidence presented.

13. Based on Mr. Huntsman’s testimony, the claim files for 41A 94905-00 and 41A 94915-00, and several maps and photographs admitted during hearing, the Court finds that the proper place of use for claims 41A 94905-00 and 41A 94915-00 is 270 acres described as follows:

ID	Acres	Qtr Sec	Section	Township	Range	County
1	148	SW	34	12S	9W	Beaverhead
2	76	W2SE	34	12S	9W	Beaverhead
3	46	W2NE	3	13S	9W	Beaverhead
Total	270					

14. The testimony and evidence presented at hearing regarding the flow rate, place of use, and maximum acreage for claim 41A 94915-00 is sufficient to overcome the prima facie status of those elements of the claim.

41A 94943-00

15. Claim 41A 94943-00 is presently owned by Evon W. Huntsman Family LLC. The claim appeared in the Preliminary Decree for Basin 41A with issue remarks based on pre-decree examination by the DNRC indicating (a) the flow rate may require modification based on resolution of maximum acres issue; and (b) the claimed place of use and acres irrigated could not be identified from data submitted with the claim. Evon W. Huntsman Family LLC objected to the claim.

16. The Statement of Claim for claim 41A 94943-00 states that the source of the right is Umbrella Springs, the place of use consists of 100 acres in Section 15, T14S, R3W, and the claim is based on a Notice of Appropriation filed by Mary J. Blake with a priority date of October 1, 1903.

17. Mr. Huntsman testified that the more accurate historic place of use is 94 acres described as follows:

ID	Acres	Qtr Sec	Section	Township	Range	County
1	18	SESW	15	14S	3W	Beaverhead
2	30	NESW	15	14S	3W	Beaverhead
3	28	SESW	15	14S	3W	Beaverhead
4	18	NENW	15	14S	3W	Beaverhead
Total	94					

18. The Blake Notice of Appropriation clearly identifies the place of use as the SWNW Section 15, Township 14S, Range 3W, which is inconsistent with Mr. Huntsman's testimony and with the Statement of Claim map and aerial photographs

contained in the claim file. This suggests that the claim is not based on the filed Notice of Appropriation and should instead be identified as a use claim.

19. Mr. Huntsman testified that his parents acquired the place of use for 41A 94943-00 in 1967, but he did not know the month or date. The priority date will be changed to December 31, 1967.

20. There is nothing in the claim file to overcome the prima facie evidence of the claimed flow rate. Therefore it will remain 3 CFS as claimed.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 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. Rule 19, W.R.Adj.R.

2. Mr. Huntsman's testimony is sufficient to establish that Huntsman Ranch Company is the successor to Evan V. Huntsman and Florence M. Huntsman. The ownership issue remark will be removed from claim 41A 94915-00. Huntsman Ranch Company is instructed to update the ownership of the claim with the DNRC.

3. Mr. Huntsman's testimony, along with the admitted aerial photographs, photographs of ditches and diversions, maps, and other evidence from the claim file, overcomes the prima facie status of the Statement of Claim for 41A 94915-00 regarding the place of use and maximum acreage. The place of use for claim 41A 94915-00 will be changed from the claimed 64 acres to the 270 acres described in the Findings of Fact. The place of use for claim 41A 94905-00 will also be changed to the 270 acres described in the Findings of Fact.

4. Mr. Huntsman's testimony and the photographs of the Buhler Drain Ditch establish that the Buhler Drain Ditch is uncontrolled. This evidence overcomes the prima facie status of water right 41A 94915-00, which was claimed with a flow rate of 3 CFS. Because the Buhler Drain Ditch has no check dams, headgates or other control structures,

the claim should be decreed without a flow rate. Rule 14(d)(6), W.R.C.E.R. The following information remark will be added to the claim:

NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE
CONSISTS OF UNCONTROLLED WASTE AND SEEPAGE WATER.

5. The above changes to maximum acres and flow rate resolve all issue remarks, objections and on motion concerns associated with claim 41A 94915-00.

6. Claim 41A 94943-00 was filed as a “filed” right based on the Notice of Appropriation filed by Mary J. Blake claiming a priority date of October 1, 1903. However, the Blake Notice of Appropriation identifies a place of use that is different from the place of use described by Mr. Huntsman and different from the place of use described on the Statement of Claim. The Court concludes that 41A 94943-00 was mistakenly filed as a “filed” right based on the Blake Notice of Appropriation and that it should be changed to a “use” right.

7. Changing water right 41A 94943-00 from a “filed” right to a “use” right does not have any effect on the prima facie status of that claim. “The only material elements of a water right required by statute and the only characteristics that matter when water rights are decreed and administered are the elements contained in section 85-2-224(1)(a)-(f), MCA.” *Case 41O-209 Order Regarding Admissibility of Notice of Appropriation and Burden of Proof*, at 16, January 31, 2013. In this case, however, changing 41A 94943-00 to a use right raises questions about the validity of the priority date. Huntsman cannot claim a priority date based on the Blake Notice because Blake did not claim a water right for the lands Huntsman asserts are irrigated. The evidence in the record establishes that claim 41A 94943-00 should be identified as a use right rather than a filed right. Claim 41A 94943-00 is still entitled to prima facie status despite this change to type of right. However, the priority date will be changed as described in Conclusion of Law 9.

8. Claim 41A 94943-00 received an issue remark regarding flow rate due to the uncertainty surrounding the place of use. There is no evidence to overcome the prima facie status of the claimed flow rate. Neither the evidence in the claim file nor the

flow rate issue remark overcomes the prima facie status of the claimed flow rate. Therefore, the flow rate will remain 3 CFS as claimed.

9. Mr. Huntsman testified that his family had been irrigating 94 acres from Umbrella Springs since acquiring the property in 1967. When the priority date of a water right claim only includes the year of first use, the priority date is decreed as the last day of that year. Rule 13(f)(3), W.R.C.E.R. The priority date for claim 41A 94943-00 will be changed to December 31, 1967.

10. If a claimant agrees to reduce or limit an element of a claim, the Water Court does not need to determine whether the burden of proof has been met. The Water Court may accept a claimant's requested reduction or limitation without further presentation of evidence, unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R. The change in priority date from October 1, 1903 to December 31, 1967 is a reduction to the claim and is corroborated by Mr. Huntsman's testimony.

11. The change to place of use from 100 acres to 94 acres is also a reduction to the claim. The change to the place of use is corroborated by Mr. Huntsman's testimony and information contained in the claim file. The Court concludes the place of use for 41A 94943-00 should be the 94 acres set forth in the Findings of Fact above.

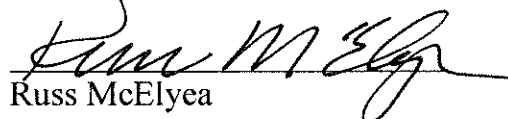
12. The above changes to claim 41A 94943-00 resolve all of the DNRC issue remarks and objections associated with the claim.

JUDGMENT AND ORDER

Based upon the Findings of Fact and Conclusions of Law, the Court orders that Statements of Claim 41A 94905-00, 41A 94915-00, and 41A 94943-00 are modified as set forth above. Post Decree Abstracts are served with this Order to confirm the changes have been made in the state's centralized record system. For Post Decree Abstracts of the other claims in this case, see the November 13, 2015 Master's Report.

IT IS ORDERED case 41A-21 is CLOSED.

DATED this 14th day of November, 2016.


Russ McElyea
Chief Water Judge

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