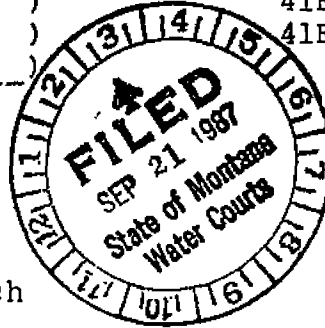


IN THE WATER COURTS OF THE STATE OF MONTANA

UPPER MISSOURI DIVISION - MADISON RIVER BASIN (41F)

* * * * *

| | | |
|-------------------------------------|---|---------------------------|
| IN THE MATTER OF THE ADJUDICATION |) | CASE NO. 41F-59 |
| OF THE EXISTING RIGHTS TO THE USE |) | |
| OF ALL THE WATER, BOTH SURFACE AND |) | CLAIM NO. 41F-W-003482-00 |
| UNDERGROUND, WITHIN THE MADISON |) | 41F-W-003483-00 |
| RIVER DRAINAGE AREA, INCLUDING ALL |) | 41F-W-003484-00 |
| TRIBUTARIES OF THE MADISON RIVER |) | 41F-W-003485-00 |
| IN BEAVERHEAD, GALLATIN AND MADISON |) | 41F-W-003486-00 |
| COUNTIES, MONTANA. |) | 41F-W-003487-00 |



CLAIMANT: James E. Robertson

OBJECTOR: Thomas Wilson
 Triple S Ranch
 Robert S. Nelsen
 Lewis Hughes, Hughes Ranch
 J & M Land and Livestock

Upon review of the Statements of Claims, objections and briefs filed, the following Findings of Fact and Conclusions of Law and Order are entered:

FINDINGS OF FACT

I

The James E. Robertson claims 41F-W-003482-00, 41F-W-003483-00, 41F-W-003484-00, 41F-W-003485-00, 41F-W-003486-00 and 41F-W-003487-00 are based on water rights decreed to L. L. Gordon, George Gordon and C. B. Gordon in Cause Number 1183, Fifth Judicial District, Madison County, Montana, dated August 6, 1912.

II

Finding of Fact XXXIV of decree number 1183 states:
That the parties, plaintiffs and defendants mentioned in the foregoing finds are entitled to the respective amounts of water where their several ditches hereinbefore mentioned first enter the lands to which said ditches are appurtenant. (emphasis added)

III

Conclusion of Law XXV of decree number 1183 states:

That the parties, plaintiffs and defendants, mentioned in the foregoing findings of fact and conclusions of law are entitled to the respective amounts of water where their several ditches hereinbefore mentioned first enter the lands to which said ditches are appurtenant. (emphasis added)

IV

Paragraph II of the Order of decree number 1183 especially reiterates the Conclusions of Law, including Conclusion of Law XXV recited above.

V

Paragraph IV of the Order of decree number 1183 states:

That each owner or owners of a water ditch or water right, as herein enumerated, shall keep in his, her or their ditch or ditches headgates at the respective points of diversion of said ditch or ditches from South Meadow Creek and its tributaries mentioned in said findings of fact and conclusions of law, and shall (sic) further keep in said ditches or ditch, at or near such headgates, or at the points where said ditches first enter the land such suitable appliances for the proper and correct measurement of water passing through said headgates and ditches that the quantities of water passing through said headgates and ditches may be ascertained at any time and that in cases where a ditch is owned by more than one party, the owners or users of such ditch shall keep therein, at the point or points of diversion of the water in such ditch, suitable measuring devices, so that each party may receive his or her proper proportion of the water to which he or she is entitled as herein set out. (emphasis added)

VI

A reading of decree number 1183, particularly those portions recited above, indicates that the point of measurement for each flow rate decreed to each party therein is where the ditch first enters the land of each party.

VII

As a result of a dissatisfied water users action brought by Thomas J. Wilson and Lawrence Gibbs in 1977, Judge Frank E. Blair, Fifth Judicial District, entered an Order on April 16, 1979 which directed that all measuring devices be installed at or near the headgates on South Meadow Creek.

VIII

The former measuring point for James E. Robertson's water rights was his line fence, in other words, where the ditch first entered his land.

IX

The current measuring point at the headgate on South Meadow Creek, is approximately three miles away from the former measuring point.

X

This distance between the former and the current measuring points necessitates the inclusion of an additional flow rate as conveyance loss to insure the delivery of the decreed flow rates at the former measuring point.

CONCLUSIONS OF LAW

I

The Water Court has jurisdiction to review all objections to temporary preliminary decrees pursuant to 85-2-233 Mont. Code Anno.

II

The August 6, 1912 decree in cause number 1183, Fifth Judicial District, Madison County, Montana clearly directs that the flow rates therein decreed are to be measured at the point where the ditch first enters the land of each party.

III

The April 16, 1979 Order by Judge Blair, in this same cause clearly directs that the point of measurement shall be at or near the headgates on South Meadow Creek.

IV

The distance between the former and the current measuring point necessitates the inclusion of an additional flow rate as conveyance loss to insure the delivery of the decreed flow rates at the former measuring point.

V

An additional flow rate is required to properly deliver these decreed rights to the line fence.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law it is

ORDERED that a reasonable conveyance loss shall be diverted in order to insure the delivery of the decreed flow rate from the headgate on South Meadow Creek to the line fence, the former measuring place of these James E. Robertson claims:

ORDERED that estimated conveyance losses are to be filed every year as detailed in this court's Order concerning the Motion to Amend Claim entered on September 21, 1987: and

ORDERED that questions concerning the admissibility of evidence concerning factors to be considered in determining a reasonable conveyance loss are best decided at the hearing of objections to estimated conveyance loss.

DATED this 21 day of September, 1987.


Kathryn L. W. Lambert
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