

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)

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IN THE MATTER OF THE ADJUDICATION OF)
THE EXISTING RIGHTS TO THE USE OF ALL)
THE WATER, BOTH SURFACE AND UNDERGROUND,)
WITHIN THE GALLATIN RIVER DRAINAGE AREA)
INCLUDING ALL TRIBUTARIES OF THE)
GALLATIN RIVER IN GALLATIN, PARK AND)
MADISON COUNTIES, MONTANA)

CASE NO. 41H-29

41H-W-010056-00

FILED

APR 8 1993

CLAIMANT: Constance G. McGuire

OBJECTOR: Lester E. Crouse

ORDER

Montana Water Court

On January 21, 1993 Leanne M. Schraudner, on behalf of Lester E. Crouse, filed a Motion for an Interlocutory Review. Briefs were filed. The Court has read the briefs on the instant motion and the briefs and exhibits filed in support of and in response to the original Motion for Summary Judgment and the December 21, 1992 Order of the Senior Water Master.

The Motion for an Interlocutory Review is GRANTED.

A Motion for an Interlocutory Review is unusual but it will be granted in the appropriate case. This Court does not want to encourage a flood of motions seeking interlocutory review of the daily decisions of five water masters. However, it will entertain such motions so long as they are serious, made in good faith and do not become burdensome. Such motions are not analogous to an appeal to the Supreme Court from an interlocutory order of a district judge. The relationship between a water judge and a water master is sufficiently different from that of a district judge and the Supreme Court to treat interlocutory review of a water master's

order in a different manner.

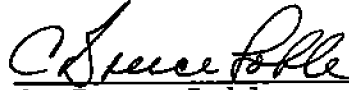
The issue raised by the Motion for Summary Judgment is a close call. Arguably, the Separate Answer of the Defendant Delia E. McGuire (Exhibit 9) might help support an assertion that the July 1, 1865 right was placed in issue during the Decker v. Gowin (Cause No. 6440) proceeding. However, the current record is not sufficient to convince the Court to alter the Senior Water Master's decision by this review. "If there is any doubt as to the propriety of a motion for summary judgment, it should be denied." Dare v. Montana Petroleum Marketing Co., 212 Mont. 274, 280, 687 P.2d 1015 (1984).

The Court believes that additional analysis by counsel and additional evidence at a hearing would be helpful. A particularly interesting aspect of the issue raised in this case is the interlineation found in the prayer on page 7 of the Delia E. McGuire Separate Answer which appears to state "ie - 60 inches of July 1, 1865 and 75 inches of June 1st 1873 -." No reference was made to that interlineation in the briefs and the parties may want to discuss the significance, if any, of that interlineation in future proceedings. Additional evidence of the historical use or non use of the right in question and evidence regarding the unresolved factual issues mentioned by the Senior Water Master in her December 21, 1992 Order would assist the Court in resolving its uncertainty.

The Court has reviewed the December 21, 1992 Order of the Senior Water Master and concludes that the Order should not be

changed by virtue of this review and the matter is referred to the master for further proceedings.

DATED this 8th day of April, 1993.



C. Bruce Loble
Chief Water Judge

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