

FILED

JUN 08 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

**ORDER GRANTING RULE 60(b) MOTION, ORDER REOPENING CASE, AND
ORDER SETTING HEARING**

I. STATEMENT OF THE CASE

This matter involves a Rule 60(b) motion to partially set aside this Court's December 16, 2015 Order Amending and Adopting Master's Report. That order adopted portions of a Water Master's Report issued in this case. The Water Master's recommendations included changes to claim 41A 94915-00 and termination of 41A 94943-00. The Master's recommendations were based on claimants' failure to provide information pertaining to these claims when requested, failure to respond to repeated orders of the Court, and repeated failure to meet Court-imposed deadlines. The claimants are represented by William Hritsco.

After missing several deadlines established by the Water Master, claimants filed an untimely objection to the Master's Report. The objection was not considered because it was filed late, and the Master's Report was adopted with little alteration. This Court's

order adopting the Master's Report described the pattern of conduct by counsel as follows:

- The first Order in this case was issued on April 7, 2015. That Order required the claimants to file motions to amend their claims together with evidence to resolve both issue remarks and objections. The deadline for filing was June 3, 2015. The claimants did not file motions to amend or supply any supporting evidence by the deadline. The Water Master's April 7, 2015 Order stated that failure to comply with the Order could result in sanctions up to and including entry of default and termination of a water right claim or dismissal of objections pursuant to Rule 22, W.R.Adj.R.
- On June 9, 2015 the Master issued another Order again directing the claimants to file motions to amend and supporting evidence by July 7, 2015. This Order stated that if nothing was filed by July 7, 2015 the claims would be amended or dismissed in accordance with issue remarks. Nothing was filed by the July 7, 2015 deadline.
- On August 11, 2015 claimants' counsel, Mr. William Hritsco, filed a Joint Motion for Extension of Time to File Amendments. Mr. Hritsco acknowledged his failure to comply with both the June 3, 2015 in the July 7, 2015 deadlines. He offered several explanations for this failure and requested until September 30, 2015 to file amendments to resolve issue remarks and objections. The Water Master granted Mr. Hritsco's request. Once again, the Master noted that if nothing was filed by September 30, 2015 the claims would be amended or dismissed in accordance with the issue remarks.
- Nothing was filed by the September 30, 2015 deadline.
- A Master's Report was issued. The Master's Report addressed all of the issue remarks in this case. The Water Master also dismissed the claimants' objections.
- The claimants did not file a request for extension of time to object to the Master's Report and did not file a timely objection to the Master's Report.

Based on the foregoing problems, this Court adopted the Master's recommendation to modify claim 41A 94915-00 and terminate claim 41A 94943-00.

Mr. Hritsco filed a motion to set aside this Court's order pursuant to Rule 60(b). He offers a number of explanations for failure to comply with the orders of this Court including the press of other business, irregularities in case consolidation, an annual medical checkup for his daughter, a traffic accident in 2009 that causes him chronic pain and requires ongoing medical treatment, and a UTV accident in December of 2015 resulting in broken ribs. Mr. Hritsco argues that these explanations constitute either inadvertence or excusable neglect within the meaning of Rule 60(b)(1), M. R. Civ. P. In the alternative, Mr. Hritsco asserts that his mistakes should not cause harm to his clients, and that this Court's order adopting the Master's Report can also be set aside under Rule 60(b)(6), M. R. Civ. P. for "any other reason that justifies relief."

II. ISSUES AND ANALYSIS

1. Does conduct of the claimants' attorney constitute inadvertence or excusable neglect which would justify setting aside this Court's order?

Forgiveness of mistakes because of inadvertence recognizes that humans are imperfect, and that harsh punishment for the occasional error is inconsistent with fundamental notions of fairness. "Rigorous law is often rigorous injustice." Terence, *The Self Tormentor*, 163 B.C.

There is, however, a difference between forgiveness of an ordinary mistake and tolerance of repeated failures to comply with Court orders, or conduct by counsel that shows a pervasive disregard for the judicial system and for his clients' welfare. Montana Supreme Court "precedent makes it clear that 'mistake,' 'inadvertence,' and 'excusable neglect' generally require some justification for an error beyond mere carelessness or ignorance of the law." *Antonick v. Estate of Lutgen*, 2006 MT 161N, ¶ 14, 2006 Mont. LEXIS 325.

The conduct of counsel in this case goes far beyond the inadvertence contemplated by Rule 60(b)(1). Counsel has missed repeated deadlines and has failed to comply with multiple Court orders not only in this case, but in others before the Water Court. These

actions have exposed his clients to modification or loss of their water rights, and have wasted substantial judicial resources. This conduct has continued for months and has persisted in the face of multiple warnings that it stop. It does not constitute an isolated mistake warranting relief under Rule 60(b)(1). On the contrary, this pattern of conduct is so pervasive that it fully justifies the imposition of sanctions, including termination of claims or objections. The recommendations made in the Master's Report were therefore reasonable and appropriate.

Counsel's conduct also falls outside the definition of excusable neglect. Excusable neglect is conduct that a reasonable person would forgive under the circumstances.

"[F]ailure to appear due to forgetfulness and the press of other, more important business is not sufficient to establish excusable neglect." *Morris v. Frank Transp. Co.*, 184 Mont. 74, 76, 601 P.2d 698, 699 (1979) (citing *Dudley v. Stiles*, 142 Mont. 566, 568, 386 P.2d 342, 343 (1963)). "[E]xcusable neglect' require[s] some justification for an error beyond mere carelessness or ignorance of the law on the part of the litigant or his attorney." *In re Marriage of Castor*, 249 Mont. 495, 499, 817 P.2d 665, 667 (1991).

The explanations offered by Mr. Hritsco might suffice to excuse an isolated instance of neglect, but they are not sufficient to explain numerous failures in this and other cases occurring over a lengthy period of time. The general picture that emerges is of an attorney with a busy law practice who has suffered some personal setbacks similar to those faced by many people. These factors are not enough to explain or excuse repeated failures to comply with show cause orders, repeated failure to respect deadlines after requesting and receiving extensions, and failure to take the common sense steps needed to keep these problems from recurring.

The neglect in this and other cases before the Water Court has occurred on a scale that a reasonable person would find unacceptable. Excusable neglect as contemplated in Rule 60(b)(1), M. R. Civ. P. has not been met.

2. Is relief justified under Rule 60(b)(6), M. R. Civ. P.?

“[R]elief is warranted under [Rule 60(b)(6), M. R. Civ. P.] in extraordinary situations... beyond those covered by [Rule 60(b)(1)-(5), M. R. Civ. P.]... .” *Karlen v. Evans*, 276 Mont. 181, 190, 915 P.2d 232, 238 (1996) (citing *Falcon v. Faulkner*, 273 Mont. 327, 334, 903 P.2d 197, 201-202 (1995)). These situations include “gross neglect of a diligent client’s case.” *Id.* Although an attorney’s neglect is ordinarily “imputed to the client and is insufficient to set aside a default... gross neglect of a diligent client’s case may be enough to warrant setting a default judgment aside” under Rule 60(b)(6), M. R. Civ. P. *Falcon v. Faulkner*, 273 Mont. 327, 334, 903 P.2d 197, 201-202 (1995) (internal citations omitted).

The conduct of Huntsmans’ counsel amounted to gross neglect which resulted in modification and termination of Huntsmans’ water rights. Like many ranching families, the Huntsmans have put together their operation over decades. The loss of water rights threatens the balance of such operations and can lead to economic and other consequences which cannot be redressed by a claim for monetary damages alone.

It does not appear that members of the Huntsman family were aware until lately of the threat to their water rights posed by their attorney’s failure to respect Court orders. Evon Huntsman indicated to the Court that he had not received the notices sent to Mr. Hritsco. This assertion is understandable given that the Court does not ordinarily include represented parties on its service list. Mr. Huntsman has requested that he be added to the service list so that he can be informed about future activity in this case and others in which his family is involved. That request has been implemented.

III. CONCLUSION AND ORDER

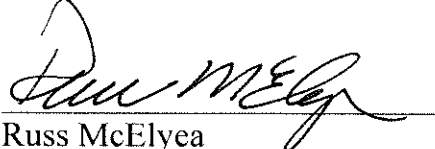
Giving the Huntsman family the benefit of the doubt on this issue, and given the gross neglect of counsel, it is appropriate to set aside this Court’s previous order modifying claim 41A 94915-00 and terminating claim 41A 94943-00.

Accordingly, it is

ORDERED case 41A-21 is reopened to address claims 41A 94915-00 and 41A 94943-00 only.

ORDERED that a hearing will be held at **9:00 a.m. on July 27, 2016 at the offices of the Montana Water Court in Bozeman** regarding Huntsmans' objections to claims 41A 94915-00 and 41A 94943-00.¹

DATED this *8* day of *June*, 2016.


Russ McElyea
Chief Water Judge

William A. Hritsco
Davis Warren & Hritsco
PO Box 28
Dillon, MT 59725-0028
(406) 683-2363
hritsco@qwestoffice.net

Evan V. Huntsman (Deceased)
Florence M. Huntsman (Deceased)
PO Box 86
Dell, MT 59724

Huntsman Ranch Co.
PO Box 240086
Dell, MT 59724-0086

Evon W. Huntsman Family LLC
PO Box 240052
Dell, MT 59724-0052

¹ The Montana Water Court will be moving to a new location. As of July 1, 2016, the Water Court's physical address will be 1123 Research Drive, Bozeman, Montana 59718. The July 27, 2016 hearing will be held in person at the Water Court's new physical address.

Last Order:²

**Caitlin B. Imaki, Trial Attorney
Joseph H. Kim, Trial Attorney
Joseph T. Mathews, Trial Attorney
Anna K. Stimmel, Trial Attorney
James DuBois, Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
(202) 305-0247 (Imaki)
(202) 305-0207 (Kim)
(202) 305-0432 (Mathews)
(415) 744-6480 (Stimmel)
(303) 844-1375 (Dubois)
Fax: (202) 305-0506
caitlin.imaki@usdoj.gov
joseph.kim@usdoj.gov
joseph.mathews@usdoj.gov
anna.stimmel@usdoj.gov
james.dubois@usdoj.gov**

Note: Service List Updated 6/3/2016

² The United States of America (Bureau of Land Management) (BLM) was added to the service list on the November 13, 2015 Master's Report. The BLM owns property associated with the places of use for claims 41A 94904-00 and 41A 164799-00. Therefore, the BLM was identified as a potential owner of those two water rights and added to the service list. Because this order, and future proceedings as a result of this order, will not be addressing either of the claims associated with the BLM, the attorneys for the BLM are being removed from the service list.

FILED
DEC 16 2015

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

ORDER AMENDING AND ADOPTING MASTER'S REPORT

A Master's Report was issued in case 41A-21 on November 13, 2015. Objections to the Report were due 13 days after it was issued. Rule 23, W.R.Adj.R. and Rule 6(d), M. R. Civ. P.

The objection deadline fell on November 26, 2015, the Thanksgiving holiday. Rule 6(a), M.R.Civ.P. states that "if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday." Therefore, the deadline to file an objection to the Master's Report was Friday, November 27, 2015. The deadline for electronic filings was midnight. Rule 6(a)(4)(A), M. R. Civ. P.

Claimants Huntsman Ranch Company and Evon W. Huntsman Family LLC ("the Claimants") filed an Objection to Master's Report. In their objection, the claimants assert the objection was timely filed and provide a footnote explaining that because of the Thanksgiving holiday the objection deadline did not expire until November 27, 2015.

While the claimants' identification of the proper deadline was correct, the filing was not received by the Water Court on time. The objection was filed electronically at 12:01 a.m., November 28, 2015 – a Saturday.

The Court may, for good cause, extend a deadline when a motion is filed either before or after the deadline expires. Rule (6)(b)(1)(A)-(B), M. R. Civ. P. The claimants did not make a motion to extend. Therefore, the late-filed objection will not be considered.

The Master's Report will not be adopted in full. The Master erred in Conclusion of Law number 5, which states:

When objections are not resolved, the next procedural step is generally to put the case on hearing track. Section 85-2-233, MCA. In this case, the claimants and objectors are one and the same. Thus, it would serve no purpose to order the parties to hearing. The Court has repeatedly ordered the objectors to provide the information necessary to resolve their objections, and they have failed to do so.

The legal conclusion that "it would serve no purpose to order the parties to hearing" was made in error. Claimants who file an objection to their own water right are entitled to a hearing if they request one, even if they are the only parties in the case. There is a specific rule addressing procedures to be followed when the claimant is the only party in a proceeding. Rule 21(c), W.R.Adj.R. Whether or not the claimants and objectors are one and the same does not matter; the claimant is still entitled to an evidentiary hearing if requested, *provided* the claimant complies with Court Orders. Conclusion of Law number 5 is not adopted to the extent it enunciates a categorical ban on hearings in cases where the owner/objector is the only party. The right to a hearing can be lost, and an objection dismissed, when the claimant/objector fails to comply with Orders of the Court.

The claimant's objections were not the only matters before the Court in this case. In addition to the claimants' objections, the water rights in this case also had issue remarks. The Water Court is obliged to resolve issue remarks pursuant to statute. § 85-2-248, MCA. The standard practice of the Water Court when confronted with issue

remarks is to direct the claimants and the DNRC to develop information to help resolve the remarks. This can result in reports from the DNRC to the Water Court regarding the remarks. In addition, resolution of issue remarks frequently requires the claimants to file motions to amend their water rights when additional evidence is discovered that warrants modification of the claims in response to the issue remarks.

On some occasions, resolution of issue remarks naturally leads to withdrawal of objections because the issues raised in the issue remarks and the objections are the same. For that reason, Water Masters frequently require that issue remarks be addressed first, with any remaining objections addressed later if necessary. Addressing issue remarks first also makes sense in cases where all of the claims have received issue remarks, but not all of the claims have received objections or have been called in on motion of the Water Court.

In this case, the claimants ignored multiple Orders by the Water Court asking for information to address issue remarks. Because the claimants were not responsive, the Water Master understandably decided to address the issue remarks without the claimants' input. In addition, the Water Master terminated one of the claimants' water rights based upon information in the claim file showing no evidence of irrigation on the alleged place of use, and that the place of use appeared to be a marsh.

The following timeline shows that the claimants were given numerous opportunities to provide the Court with information to both resolve issue remarks and the objections to its water rights.

- The first Order in this case was issued on April 7, 2015. That Order required the claimants to file motions to amend their claims together with evidence to resolve both issue remarks and objections. The deadline for filing was June 3, 2015. The claimants did not file motions to amend or supply any supporting evidence by the deadline. The Water Master's April 7, 2015 Order stated that failure to comply with the Order could result in sanctions up to and including entry of default and termination of a water right claim or dismissal of objections pursuant to Rule 22, W.R.Adj.R.

- On June 9, 2015 the Master issued another Order again directing the claimants to file motions to amend and supporting evidence by July 7, 2015. This Order stated that if nothing was filed by July 7, 2015 the claims would be amended or dismissed in accordance with issue remarks. Nothing was filed by the July 7, 2015 deadline.
- On August 11, 2015 claimants' counsel, Mr. William Hritsco, filed a Joint Motion for Extension of Time to File Amendments. Mr. Hritsco acknowledged his failure to comply with both the June 3, 2015 in the July 7, 2015 deadlines. He offered several explanations for this failure and requested until September 30, 2015 to file amendments to resolve issue remarks and objections. The Water Master granted Mr. Hritsco's request. Once again, the Master noted that if nothing was filed by September 30, 2015 the claims would be amended or dismissed in accordance with the issue remarks.
- Nothing was filed by the September 30, 2015 deadline.
- A Master's Report was issued. The Master's Report addressed all of the issue remarks in this case. The Water Master also dismissed the claimants' objections.
- The claimants did not file a request for extension of time to object to the Master's Report and did not file a timely objection to the Master's Report.

Compliance with Court Orders is a fundamental prerequisite to an efficient adjudication process. The Water Court has hundreds of cases underway simultaneously. The time required to process these cases is extended substantially when litigants do not comply with deadlines imposed by the Court. In most cases, litigants are given several chances to comply with missed deadlines before sanctions are imposed. Even after the imposition of sanctions, the Water Court has often vacated Orders dismissing objections, terminating water rights, or imposing other sanctions when it became apparent that a party's conduct amounted to excusable neglect, or extenuating circumstances explained noncompliance.

In addition, the Water Court strongly prefers resolution of water rights based on the merits, as opposed to resolving issues without participation by claimants or objectors.

At some point however, the Court cannot continue expending resources for the benefit of parties who repeatedly ignore Orders to participate in the process. That is especially true where a party has objected to its own water rights, but supplies no information in support of those objections, and where, as here, a party ignores deadlines after having asked for and received extensions of time.

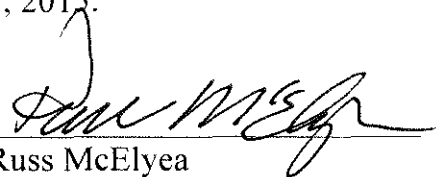
It is with considerable reluctance that the Court makes decisions to dismiss objections or terminate water right claims. However, the Court has a duty to all water users to complete the adjudication and issue final decrees of the water rights before it. Although the Court will tolerate ordinary human error, it cannot tolerate serial failures to comply with Court Orders, or a pattern of conduct that shows disregard for the process.

Unfortunately, the present case involves repeated noncompliance with Court Orders. That pattern of conduct cannot be tolerated. The actions taken by the Water Master in response to this conduct were appropriate.

Accordingly, it is

ORDERED that the Master's Report is AMENDED to omit Conclusion of Law number 5, and the Report is ADOPTED as AMENDED. The Court will consider a timely filed Rule 60(b), M. R. Civ. P. motion if adequately supported.

DATED this 16 day of December, 2015.


Russ McElyea
Chief Water Judge

William A. Hritsco
Davis Warren & Hritsco
PO Box 28
Dillon, MT 59725-0028
(406) 683-2363
hritsco@qwestoffice.net

Caitlin B. Imaki, Trial Attorney
Joseph H. Kim, Trial Attorney
Joseph T. Mathews, Trial Attorney
Anna K. Stimmel, Trial Attorney
James DuBois, Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
(202) 305-0247 (Imaki)
(202) 305-0207 (Kim)
(202) 305-0432 (Mathews)
(415) 744-6480 (Stimmel)
(303) 844-1375 (Dubois)
Fax: (202) 305-0506
caitlin.imaki@usdoj.gov
joseph.kim@usdoj.gov
joseph.mathews@usdoj.gov
anna.stimmel@usdoj.gov
james.dubois@usdoj.gov

Evan V. Huntsman (Deceased)
Florence M. Huntsman (Deceased)
PO Box 86
Dell, MT 59724

Note: Caption and Service List Updated 12/11/2015

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270 (In-state only)
(406) 586-4364
Fax: (406) 522-4131

FILED

NOV 13 2015

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 Huntsman Family LLC

OBJECTOR: Huntsman Ranch Co.; Evon 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

NOTICE OF FILING OF MASTER'S REPORT

You may file a written objection to the Report if you disagree with the Master's Findings of Fact, Conclusions of Law, or Recommendations; or if there are errors in the Report.

The above stamped date indicates the date the Master's Report was filed and mailed. Rule 23 of the Water Rights Adjudication Rules requires that written objections to a Master's Report must be filed within 10 days of the date of the Master's Report. Because the Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10 day objection period. Rule 6(d) M.R.Civ.P. This means your objection must be received no later than 13 days from the above stamped date.

If you file an objection, you must mail 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

FINDINGS OF FACT

1. The above-captioned water right claims are owned by the Evon Huntsman Family LLC, Huntsman Ranch Co. or individual members of the Huntsman family. The claims appeared in the Preliminary Decree for Basin 41A. The claims received issue remarks based on pre-decree examination by the State Department of Natural Resources and Conservation (DNRC). Claim 41A 94915-00 was called in on motion of the Water Court. Some of the claims received objections from Huntsman Ranch Co. and/or Evon Huntsman Family LLC.

2. On April 7, 2015, the claimants were ordered to file motions to amend – together with supporting evidence – sufficient to resolve the issue remarks and objections by June 3, 2015. Nothing was filed by the deadline. A Show Cause order was issued on June 9, 2015, which stated that if nothing was filed by the deadline, the claims would be amended or dismissed based on the current record. The second deadline was also missed. On August 14, 2015, the Master extended the Show Cause deadline to September 30, 2015. Again, nothing was filed by the deadline. The relevant facts are as follows:

41A 94902-00

3. Claim 41A 94902-00 represents a claim for stock use. The owners of record are Evan Huntsman and Florence Huntsman, who are both deceased. The claim received issue remarks indicating that the claimed place of use is owned by Huntsman Ranch Co. The claim also received an issue remark indicating that an amendment was submitted in 2012 (prior to issuance of the Preliminary Decree) but was not implemented because it was not signed by the owner of record.

4. The owners of record are deceased and the place of use is now owned by the Huntsman Ranch Co. The 2012 amendment acknowledges that the claim is now owned by Huntsman Ranch Co. Ownership of the claim should be updated by the claimant, and all issue remarks should be removed.

41A 94904-00

5. Claim 41A 94904-00 represents a claim for stock use. The owners of record are Evan Huntsman and Florence Huntsman, who are both deceased. The claim received issue remarks indicating that the claimed place of use is owned by Huntsman Ranch Co. The claim also received an issue remark indicating that an amendment was submitted in 2012 (prior to issuance of the Preliminary Decree) but was not implemented because it was not signed by the owner of record. Other issue remarks indicate that part of the place of use is owned by the United States Bureau of Land Management (BLM) and that the claimed priority date may be incorrect. Huntsman Ranch Co. objected to the claim.

6. The owners of record are deceased and the place of use is now owned by the Huntsman Ranch Co. The 2012 amendment acknowledges that the claim is now owned by Huntsman Ranch Co. Ownership of the claim should be updated by the claimant, and the ownership and amendment remarks should be removed.

7. The claim also received an issue remark because the claimed place of use encompasses lands owned by the BLM. Removal of BLM lands from the place of use would resolve the issue remarks. The Master finds that the place of use should be amended as outlined below in Finding of Fact #9. The issue remark regarding ownership of the place of use should be removed.

8. The claim also received an issue remark questioning the priority date because it precedes the Beaverhead County District Court's Decree in Case No. 4174, which related to the rights to Sage Creek. This issue remark is irrelevant to the claim because it is a stock right, and stock rights were generally not included in District Court Decrees. The priority date issue remark should be removed.

9. Claim 41A 94904-00 should be amended as follows:

41A 94904-00

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			N2N2	5	13S	8W	BEAVERHEAD
2			N2SWNW	5	13S	8W	BEAVERHEAD
3 2			N2N2	6	13S	8W	BEAVERHEAD
4 3			S2	1	13S	9W	BEAVERHEAD

41A 94905-00

10. Claim 41A 94905-00 represents a claim for irrigation use. The owners of record are Evan Huntsman and Florence Huntsman, who are both deceased. The claim received issue remarks indicating that the water right appears to be owned by Huntsman Ranch Co. The owners of record are deceased and the right is now owned by the Huntsman Ranch Co. Ownership of the claim should be updated by the claimants, and the ownership issue remark should be removed.

41A 94911-00

11. Claim 41A 94911-00 represents a claim for domestic use. The owners of record are Evan Huntsman and Florence Huntsman, who are both deceased. The claim received issue remarks indicating that the water right appears to be owned by Huntsman Ranch Co. The owners of record are deceased and the right is now owned by the Huntsman Ranch Co. Ownership of the claim should be updated by the claimants, and the ownership issue remark should be removed.

41A 94915-00

12. Claim 41A 94915-00 represents a waste and seepage claim. The owners of record are Evan Huntsman and Florence Huntsman, who are both deceased. The claim received issue remarks indicating that the water right appears to be owned by Huntsman Ranch Co. The owners of record are deceased and the right is now owned by the Huntsman Ranch Co. Ownership of the claim should be updated by the claimants, and the ownership issue remark should be removed.

13. The flow rate of the claim was also called in on motion of the Water Court. According to a February 13, 2014 DNRC Memorandum (located in the claim file), the claimed flow rate was zeroed out during examination based on the wrong examination criteria. The claim should have retained the claimed flow rate of 3 CFS. Thus, the claimed flow rate should be restored. The claim should be amended as follows:

41A 94915-00

Flow Rate: ~~NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF WASTE AND SEEPAGE.~~

3.00 CFS

41A 94943-00

14. Claim 41A 94943-00 represents an irrigation claim. The claim received issue remarks indicating that the place of use could not be identified from available data. The claim also received a remark indicating that the flow rate may need to be reduced based on the acreage issue. A review of the claim file shows that the DNRC was unable to find any evidence of irrigation on the claimed place of use. The claim examiner noted that the place of use appears to be a marsh. *See* 41A 94943-00 Claim File. The Evan W. Huntsman Family LLC objected to the claim but failed to provide any evidence in support of the claim and failed to respond to repeated orders from the Court. The claim should be dismissed.

41A 94943-00

DISMISSED

41A 164799-00

15. Claim 41A 164799-00 is a stock claim. The owners of record are Evan Huntsman and Florence Huntsman, who are both deceased. The claim received an issue remark indicating that part or all of the place of use appears to be on BLM land. The claim file contains water right ownership update documents filed with the DNRC on June 18, 2015. *See* 41A 164799-00 Claim File. The documentation shows that the place of use was transferred from the Huntsman's to the BLM in 1992. *Id.* The deed did not reserve any water rights. *Id.* The United States has been put on notice of its potential ownership of the claim. Ownership of the claim should be updated by the United States, and the ownership issue remark should be removed.

41A 215706-00

16. Claim 41A 164799-00 represents domestic use from a well serving one household. The claim received an issue remark because the claimed volume of 10 acre-feet per year exceeds the 1.5 acre-feet guideline for this purpose. There is no indication in the claim file that the claim serves more than one household. Thus, the volume should be reduced in accordance with the guideline.

41A 215706-00

Volume: ~~40.00 AC-FT~~ 1.5 AC-FT

CONCLUSIONS OF LAW

1. In order to ensure historical accuracy, the Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 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 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.

3. Therefore, the overarching legal issues in this case are: 1) whether the proposed changes resolve all issue remarks, objections and on motion issues; and 2) whether the evidence before the Court overcomes the prima facie proof found on the Statements of Claim.

4. Huntsman Ranch Co. and the Evan W. Huntsman Family LLC filed objections to some of these claims. The objectors (who are objecting to their own claims) were ordered to file motions to amend together with supporting evidence in order to resolve their objections. The objectors failed to comply with three separate orders from the Court and have not filed any motions or evidence related to their objections.

5. When objections are not resolved, the next procedural step is generally to put the case on hearing track. Section 85-2-233, MCA. In this case, the claimants and objectors are one and the same. Thus, it would serve no purpose to order the parties to hearing. The Court has repeatedly ordered the objectors to provide the information necessary to resolve their objections, and they have failed to do so.

6. Pursuant to Rule 22, W.R.Adj.R., an objector who fails to comply with an order issued by the Court is subject to sanctions, including dismissal of the objections. The appropriate sanction in this case is to dismiss the objections.

7. In resolving issue remarks other than through the objection process, the Court shall determine if the issue remarks can be resolved using information available in the claim file. In this case, the evidence gathered from the claim files supports amending the claims as detailed above in the Findings of Fact. The record before the Master is sufficient to overcome those prima facie elements of the claims that received issue

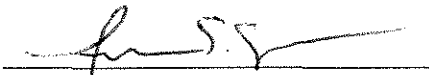
remarks. Rule 19, W.R.Adj.R.

8. For the above-mentioned reasons, the claims should be modified as shown on the attached abstracts to resolve all issue remarks and to accurately reflect historical use.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified above to correct the Preliminary Decree for this Basin. Post Decree Abstracts of Water Right Claim are served with this Report to confirm that the recommended changes have been made in the state's centralized record system.

DATED this *13* day of *November*, 2015



Andrew Gorder
Water Master

William A. Hritsco
Davis Warren & Hritsco
PO Box 28
Dillon, MT 59725-0028
(406) 683-2363
hritsco@qwestoffice.net

Caitlin B. Imaki, Trial Attorney
Joseph H. Kim, Trial Attorney
Joseph T. Mathews, Trial Attorney
Anna K. Stimmel, Trial Attorney
James DuBois, Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
(202) 305-0247 (Imaki)
(202) 305-0207 (Kim)
(202) 305-0432 (Mathews)
(202) 305-3895 (Stimmel)
(303) 844-1375 (Dubois)
Fax: (202) 305-0506
caitlin.imaki@usdoj.gov
joseph.kim@usdoj.gov
joseph.mathews@usdoj.gov
anna.stimmel@usdoj.gov
james.dubois@usdoj.gov

Evan V. Huntsman (Deceased)
Florence M. Huntsman (Deceased)
PO Box 86
Dell, MT 59724

Note: Service List Updated 10-7-15