

Montana Water Court
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FILED

JUL 07 2016

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
BLACKFOOT RIVER - BASIN 76F

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CLAIMANTS: Double Arrow Enterprises, Inc.; Double Arrow
Ranch Landowners Association

CASE 76F-61
76F 99272-00
76F 99273-00
76F 99274-00

OBJECTORS: Avista Corporation; State of Montana Department of
Fish, Wildlife, and Parks

CLAIMANTS: John W. Meyer; Joy C. Meyer; Double Arrow
Enterprises, Inc.; Double Arrow Ranch Landowners
Association; Arthur G. Croci Family Trust; Patrick
& Norma Maher Living Trust

CASE 76F-62
76F 99277-00
76F 99278-00
76F 99279-00

ORDER AMENDING AND ADOPTING MASTER'S REPORT

I. PROCEDURAL HISTORY

A Master's Report was issued in cases 76F-61 and 62 on January 28, 2016. Double Arrow Ranch Landowners Association (DARLOA) objected to the Master's Report on the grounds that a stipulation resolving the objections in this case provided that claim 76F 99277-00 was exclusively owned by Double Arrow Enterprises, Inc.. However, the abstract for claim 76F 99277-00 attached to the Master's Report reflected that the claim was owned by several other parties including the Croci Family Trust, the Patrick and Norma Maher Living Trust, John W. Meyer, and Joy C. Meyer.

On May 17, 2016, the Court issued an Order Regarding Objections to Master's Report and Order Setting Filing Deadline. The order provided the Croci Family Trust, the Patrick and Norma Maher Living Trust, John W. Meyer, and Joy C. Meyer an opportunity to inform the Court whether or not they wished to maintain their ownership

interest in claim 76F 99277-00. The parties were told that failure to respond would result in loss of ownership of that claim. On June 1, 2016, John W. Meyer and Joy C. Meyer filed a statement authorizing their removal as owners of claim 76F 99277-00. The Court did not receive any filings from the Croci Family Trust or the Patrick and Norma Maher Living Trust by the deadline.

II. STATEMENT OF THE CASE

This matter involves an objection to a Master's Report from DARLOA. The Master's Report addressed cases 76F-61 and 76F-62 jointly. The objection to the Master's Report covers claims 76F 99274-00 (case 76F-61) and 76F 99277-00 (case 76F-62). DARLOA was a claimant on both rights.

Claim 76F 99274-00 is an irrigation claim and was used for irrigation of a ranch once held in unified ownership. Claim 76F 99277-00 is a stock claim and is a multiple use of water right 76F 99274-00. The ranch was subdivided and numerous residential parcels were created. Some of the subdivided parcels include land within the place of use of claims 76F 99274-00 and 76F 99277-00.

At the start of these proceedings, the owners of claim 76F 99274-00 were shown as DARLOA and Double Arrow Enterprises, Inc.; the owners of claim 76F 99277-00 were shown as DARLOA, Double Arrow Enterprises, Inc., and the Carolyn J. Bertsch Trust. The ownership of claim 76F 99277-00 was thereafter updated as follows: the Croci Family Trust was added as an owner on 8/6/2013; the Maher Living Trust was added as an owner on 10/22/2014; John and Joy Meyer were added as owners on 7/23/2015; the Bertsch Trust was removed as an owner on 7/23/2015 and DARLOA was removed as an owner on 1/27/2016.

Claim 76F 99274-00 received objections from other parties which were resolved by stipulation. The parties to the stipulation agreed that Double Arrow Enterprises, Inc. was the sole owner of claims 76F 99274-00 and 76F 99277-00. They also agreed to flow rates for claim 76F 99274-00 that changed at different times of the year.

The stipulation was filed with the Court on March 11, 2015 and was signed by claimants DARLOA and Double Arrow Enterprises, Inc. and objectors, but not by

owners of property within the subdivision. Nor was the stipulation signed by the other owners of claim 76F 99277-00, which at the time of the filing of the stipulation included the Bertsch Trust, the Croci Family Trust and the Maher Living Trust.

The Water Master asked the DNRC to identify potential owners of the rights so they could be provided notice of the stipulation and an opportunity to object to it. Once potentially interested parties were identified, the Master issued an order providing them notice of their potential water right ownership. Order Providing Potential Owners Notice, June 30, 2015. Parties receiving this notice included the Maher Living Trust, the Bertsch Trust, the Croci Family Trust, Suzanne A. Faneuff, and Tamara C. Ludwig.

The order referenced the stipulation and directed the recipients to notify the Water Court “if you wish to pursue an ownership interest in any or all claims....” The deadline for responses was July 31, 2015.

Only Suzanne A. Faneuff and Tamara C. Ludwig responded by the deadline. Both Faneuff and Ludwig later signed the stipulation, a copy of which was provided to the Court on November 10, 2015 (case 76F-62).

The Master assumed that parties who did not object to the stipulation consented to its terms. Despite this assumption, the Croci Family Trust, the Maher Living Trust and members of the Meyer family remained as owners of record for claim 76F 99277-00.

The stipulation also addressed the flow rate for claim 76F 99274-00. The maximum flow rates authorized by the stipulation vary depending on the time of year. The Master’s Report and the abstract for claim 76F 99274-00 did not set forth these flow rates. The Master’s Report says that “instead of enumerating the requested flow rate schedule, the Court assigned the highest claimed flow rate and referenced the other flow rates with an information remark.” Master’s Report, at 5. The abstract attached to the Master’s Report showed a flow rate of 4.0 cfs and included the following explanatory remark:

PURSUANT TO STIPULATION, THE FLOW RATE OF THIS CLAIM VARIES DURING THE PERIOD OF USE. SEE STIPULATION IN CLAIM FILE FOR SPECIFIC FLOW RATE INFORMATION.

DARLOA contends the complete flow rate schedule should have been incorporated into the abstract.

III. ISSUES

1. Does the Master's Report correctly reflect ownership of claim 76F 99277-00?
2. Should more specific flow rates be added to the abstract for claim 76F 99274-00?

IV. ANALYSIS

1. Does the Master's Report correctly reflect ownership of claim 76F 99277-00?

The stipulation signed by several parties to case 76F-62 agreed the sole owner of claim 76F 99277-00 should be Double Arrow Enterprises, Inc. Other owners of record of claim 76F 99277-00, including the Bertsch Trust, the Croci Family Trust, the Maher Living Trust, and John and Joy Meyer, did not participate in the proceedings of case 76F-62 despite being provided several opportunities to either agree or disagree with the stipulation.¹ Owners of lots within the original place of use for this right were identified by reviewing land ownership on Montana's Cadastral website. The Cadastral website tracks land ownership, but not the ownership of water rights.

The owners of property identified by reference to the Cadastral website were given notice of the stipulation and an opportunity to assert an ownership interest in claim 76F 99277-00. The Master was correct to make the effort to identify these potential owners and to provide them with notice and an opportunity to participate. Only two parties responded, Faneuff and Ludwig, and they ended up signing the stipulation which recognized Double Arrow Enterprises, Inc. as the sole owner of claim 76F 99277-00.

The Croci Family Trust, the Maher Living Trust, and John and Joy Meyer remained owners of claim 76F 99277-00 in the abstracts attached to the Master's Report. This result conflicts with the stipulation.

¹ The Trustees of the Maher Trust filed a letter April 6, 2015 indicating that though they were not interested in the details of the case, they wished "to maintain any water and land use/property rights we currently have for the Patrick and Norma Maher Living Trust." However, the Maher Trust failed to respond to all subsequent orders of the Court.

However, it was not made sufficiently clear to the owners of claim 76F 99277-00 that failure to oppose the stipulation filed in case 76F-61 would lead to the loss of their claim, which is in case 76F-62.

Accordingly, the Croci Family Trust, the Maher Living Trust, and John and Joy Meyer were given 30 days to inform the Court whether they intended to maintain any ownership interest in claim 76F 99277-00. The Court received a response from John and Joy Meyer agreeing to their removal from the claim. The Court did not receive any other filings from the parties within the 30 day period provided. The abstract for claim 76F 99277-00 will be corrected to reflect Double Arrow Enterprises, Inc. as the sole owner of the claim.

2. Should more specific flow rates be added to the abstract for claim 76F 99274-00?

The stipulation identifies the flow rates for claim 76F 99274-00 as follows:

April 25 to April 30 diversion rate shall not exceed 1.5 cfs.

May 1 to June 30 diversion rate shall not exceed 4 cfs.

July 1 to July 31 diversion rate shall not exceed 3 cfs.

August 1 to September 30 diversion rate shall not exceed 2 cfs.

October 1 to October 5 diversion rate shall not exceed 1.5 cfs.

The abstract attached to the Master's Report identifies a diversion rate of 4 cfs and references the stipulation for more specific flow rate information. DARLOA asks that the flow rate information on the stipulation be incorporated into the abstract.

One of the primary purposes of the adjudication is to define water rights so they can be administered by a water commissioner in the field. Water commissioners need accurate and complete flow rate information to allocate water properly. Water commissioners do not have the ability to easily access court records in the field. Omission of complete flow rate information from an abstract forces water commissioners to locate court records before the water right can be administered. This is an impractical burden.

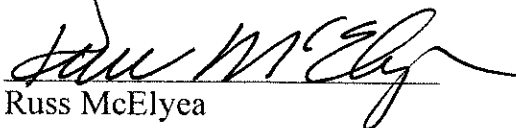
Accordingly, the abstract for claim 76F 99274-00 is modified to include the flow rates specified in the stipulation.

V. CONCLUSION AND ORDER

1. The abstract for claim 76F 99277-00 is corrected to reflect Double Arrow Enterprises, Inc. as the sole owner of that claim;
2. The abstract for claim 76F 99274-00 is modified to include the flow rates identified in the stipulation;
3. The Master's Report for cases 76F-61 and 76F-62 is ADOPTED as AMENDED above.

Post Decree Abstracts for claims 76F 99274-00 and 76F 99277-00 are served with this Order to confirm that the above described changes have been made in the state's centralized record system.

DATED this 7 day of July, 2016.


Russ McElyea
Chief Water Judge

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Patrick & Norma Maher Living Trust
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Potential Owners:
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Note: Service List Updated 6/23/2016