

Montana Water Court
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FILED

JUN 22 2017

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
TWO MEDICINE RIVER – BASIN (41M)

CLAIMANTS: Hayne Family Exemption Trust; Hayne Family
Survivors Trust

NOTICE OF INTENT TO APPEAR: Susan L. Anderson; Arrow S Inc.;
Henneman Farms; Pondera County Canal & Reservoir Co

41M-147

41M 154607-00

41M 154608-00

41M 154609-00

41M 154610-00

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 Right 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. Claim Nos. 41M 154607-00, 41M 154608-00, 41M 154609-00, and 41M 154610-00, owned by the Hayne Family Exemption Trust and the Hayne Family Survivors Trust, appeared in the Preliminary Decree for the Two Medicine River Basin (Basin 41M) with issue remarks resulting from a pre-decree examination by the State Department of Natural Resources and Conservation (DNRC).

2. No parties filed objections to the claims.

3. Susan L. Anderson, Arrow S Inc., Henneman Farms, and the Pondera County Canal and Reservoir Company (PCCRC) filed notices of intent to appear on Claim No. 41M 154607-00.

4. On March 22, 2017, this Court consolidated the above-captioned claims into Water Court Case 41M-147, and issued an Order requiring the claimants to meet with the Montana Department of Natural Resources and Conservation (DNRC) and attempt to resolve the issue remarks on the claims.

5. On May 1, 2017, the DNRC filed a Memorandum containing recommendations aimed at resolving the issues on the above-captioned claims ("May Memorandum"). Subsequently, this Court issued an Order on May 16, 2017 requiring the notice of intent to appear parties to file a status report stating whether they objected to the recommendations contained in the DNRC's May Memorandum; the order stated that, if no response was received, the Court would assume that the parties did not object to the recommendations. On June 1, 2017, PCCRC filed a status report indicating that it did not object to the DNRC's proposed recommendations, and that if the recommendation was adopted, PCCRC's notice of intent to appear would be resolved. Susan L. Anderson, Arrow S Inc., and Henneman Farms did not file a response to the May 16 Order.

6. Claim No. 41M 154607-00

During the examination period, the DNRC added the following issue remarks to Claim No. 41M 154607-00:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF
MAXIMUM ACRES ISSUE.

THE PONDERA COUNTY WATER RESOURCES SURVEY (1964) APPEARS TO INDICATE 116.41 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

The May Memorandum included a Verified Motion to Amend Water Right Claim proposing to reduce the maximum acres irrigated from 172.00 to 116.50 and the following amendments to the place of use:

PLACE OF USE (Amended)							
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	2.35		SENE	9	28N	7W	PONDERA
2	4.40		E2SENE	9	28N	7W	PONDERA
3	18.59		SWNE	10	28N	7W	PONDERA
4	19.03		NENW	10	28N	7W	PONDERA
5	13.50		NWNW	10	28N	7W	PONDERA
6	19.79		SENE	10	28N	7W	PONDERA
7	38.84		SWNW	10	28N	7W	PONDERA
	116.50						

7. The DNRC recommended that the issue remarks on Claim No. 41M 154607-00 be resolved if the amendments proposed by the claimants were adopted. May Memorandum at 3.

8. The May Memorandum included Withdrawals of Statement of Claims for Claim Nos. 41M 154608-00, 41M 154609-00, and 41M 154610-00.

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA.

2. Further, the Water Court is obligated to resolve all issue remarks. Rule 7, W.R.Adj.R.; Section 85-2-248(2), MCA. “If as a result of the examination...conducted by [DNRC] an issue remark is attached to a claim, the information resulting in the issue remark and the issue remark must be weighed against the claimed water right.” Section 85-2-247(2), MCA. An “‘issue remark’ means a statement added to an abstract of water right in a water court decree by [DNRC] or the water court to identify potential factual or legal issues associated with the claim.” Section 85-2-250, MCA. “If not otherwise resolved by the objection process, the water court shall review, resolve, and remove all

issue remarks appearing on the abstracts of any claim as directed by §§ 85-2-247 through 85-2-250.” Rule 7, W.R.Adj.R.

3. Where 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.” Rule 17(c), W.R.Adj.R. The Court may accept the requested reduction or limitation “without further presentation of evidence.” Rule 17(c), W.R.Adj.R.

CONCLUSIONS OF LAW

1. Upon review of the case files and the documentation submitted by the Claimants and the DNRC, the record supports the dismissal of Claim Nos. 41M 154608-00, 154609-00, and 41M 154610-00.

2. The proposed amendments to Claim No. 41M 154607-00 constitute voluntary reductions to a water right claim and, therefore, the record supports the following amendments to Claim No. 41M 154607-00:

MAXIMUM ACRES

Claimed: 172.00

Amended: 116.50

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	2.35		SENE	9	28N	7W	PONDERA
2	4.40		E2SENE	9	28N	7W	PONDERA
3	18.59		SWNE	10	28N	7W	PONDERA
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6	19.79		SENE	10	28N	7W	PONDERA
7	38.84		SWNW	10	28N	7W	PONDERA
	116.50						

3. Pursuant to the May 16 Order of this Court, the record supports the resolution of the notices of intent to appear filed by Susan L. Anderson, Arrow S Inc., and Henneman Farms.

4. Pursuant to the PCCRC’s June 1 filing, the record supports the resolution of the notice of intent to appear filed by PCCRC.

RECOMMENDATIONS

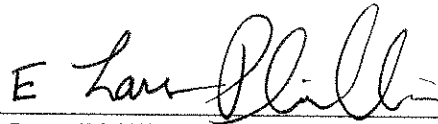
1. Upon review of the case files, the record in this case, and the evidence presented, all issue remarks on Claim No. 41M 154607-00 should be resolved and the amendments indicated above should be implemented.

2. Claim Nos. 41M 154608-00, 41M 154609-00, and 41M 154610-00 should be dismissed.

3. All notices of intent to appear in this case should be resolved.

4. The undersigned Water Master recommends the Water Court amend the claims as specified in this Master's Report. Post Decree Abstracts of Water Right Claims are attached to this Master's Report for review.

DATED this 22nd day of June, 2017.



E. Lars Phillips
Water Master

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