

Montana Water Court
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ELECTRONICALLY FILED

41B-0500-A-2022

November 4, 2022

Montana Water Court

MONTANA WATER COURT, UPPER MISSOURI DIVISION
BEAVERHEAD RIVER - BASIN 41B

CLAIMANT: Beaverhead 7 Up Ranch Inc.

CASE 41B-0500-A-2022
41B 88015-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve 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

On May 27, 2022, Claimant Beaverhead 7 Up Ranch, Inc. filed a motion to amend Water Right Claim 41B 88015-00. Claimant attached various maps and other evidence.

Upon review, the Court may grant Claimant's motion without further proceedings. For organizational purposes, this claim is consolidated into Water Court Case 41B-0500-A-2022.

FINDINGS OF FACT

1. Claim 41B 88015-00 is for an irrigation water right in Beaverhead County.

2. Claimant requests the Court modify the abstract of this claim by amending the source from Stodden Slough to Beaverhead River and the ditch name of the point of diversion from Johnson Ditch to Lower River Ditch.

3. Claimant's Motion to Amend includes an affidavit from Kimberly Laden who states that she and her parents have owned and lived on the subject property since 1939 and that historically this water was delivered from the Beaverhead River through what is known as the Lower River Ditch. Ms. Laden states that the change to the Johnson Ditch out of Stodden Slough was made in error and should be corrected to ensure historical accuracy.

4. Additionally, Claimant's Motion to Amend includes a statement made by current Beaverhead River Water Commissioner Ted Crampton who echoes the statements made by Ms. Laden stating, "during my time as water commissioner on the Beaverhead River, I have historically delivered 41B 88015-00 water through the Lower River Ditch."

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. A claimant may move to amend their water right claim so that the claim more accurately represents historical use. Section 85-2-233, MCA; Rule 10, W.R.Adj.R. Notice to other water right owners may be required if the amendment would adversely affect other water rights. 85-2-233(6)(a)(i). Claimants wishing to amend their claim must overcome the prima facie status of the claim by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R.

CONCLUSIONS OF LAW

1. Basin-wide notice pursuant to Section 85-2-233(6), MCA is not necessary because the requested modification is not likely to adversely affect other water rights in the basin. There is no request to enlarge the amount of water used or make the priority date of either right more senior. Rather, this is a correction to bring the claim back into conformity with historical use.

2. The requested amendment to the source and point of diversion ditch name claim overcomes the prima facie status of the claim by a preponderance of the evidence in the record.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin.

A post-decree abstract of water right claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

Eugene C. White
Water Master

Service via USPS Mail:
Beaverhead 7 Up Ranch Inc.
6875 MT Hwy 41
Dillon, MT 59725-7303

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BEAVERHEAD RIVER
BASIN 41B**

Water Right Number: 41B 88015-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: BEAVERHEAD 7 UP RANCH INC
6875 MT HWY 41
DILLON, MT 59725 7303

Priority Date: JUNE 15, 1884

Type of Historical Right: DECREED

Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 9.00 CFS

WATER RIGHTS 41B 88015-00 AND 41B 143046-00 ARE BASED ON THE JUNE 15, 1884 WATER RIGHT DECREED TO JOHN BISHOP IN MORGAN V. NYHART, CASE NO. 1053, MONTANA FIFTH JUDICIAL DISTRICT COURT (FEBRUARY 8, 1904). CASE NO. 1053 DECREED 9.0 CFS FOR THIS JUNE 15, 1884 WATER RIGHT. HISTORICALLY, THIS 9.0 CFS HAS IRRIGATED THE ENTIRE PLACE OF USE INDICATED ON BOTH OF THESE CLAIMS. HOWEVER, ONLY A TOTAL FLOW RATE OF 9.0 CFS SHALL BE DIVERTED PURSUANT TO 41B 88015-00 AND 41B 143046-00 AT ANY TIME; THIS SHALL NOT LIMIT THE AMOUNT OF WATER DIVERTED BY THE CLAIM OWNERS PURSUANT TO OTHER WATER RIGHTS. THE OWNERS OF THESE WATER RIGHTS ARE RESPONSIBLE FOR AGREEING AMONGST THEMSELVES IN EACH IRRIGATION SEASON AS TO HOW THE FLOW RATE IS ALLOCATED BETWEEN THE WATER RIGHTS, INCLUDING BUT NOT LIMITED TO ALLOCATION ON A TIME-ROTATION BASIS. IF THE OWNERS CANNOT AGREE, THEN THE FLOW RATE SHALL BE ALLOCATED 1/3 OF THE 9.0 CFS (3.0 CFS) TO WATER RIGHT 41B 88015-00 AND 2/3 OF THE 9.0 CFS (6.0 CFS) TO WATER RIGHT 41B 143046-00 FOR THAT IRRIGATION SEASON OR UNTIL SUCH TIME AS THE OWNERS AGREE TO OTHERWISE ALLOCATE THE 9.0 CFS FLOW RATE BETWEEN THEMSELVES.

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

***Maximum Acres:** 236.00

***Source Name:** BEAVERHEAD RIVER
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWSE	22	6S	8W	BEAVERHEAD

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: LOWER RIVER DITCH

Period of Use: APRIL 1 TO OCTOBER 1

