

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
KOOTENAI RIVER BASIN (76D)
PRELIMINARY DECREE

CLAIMANTS: Project 44 Living Trust; Theodore G. Mott

CASE 76D-0550-R-2024
76D 143735-00

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 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

Statement of the case

The above captioned domestic claim appeared in the Preliminary Decree with the following issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 143735-00 50482-00

Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

Montana law requires the Water Court to resolve issue remarks. Claimants were ordered to meet with DNRC to attempt resolution of the issue remark. Claimant Theodore G. Mott completed the issue remark resolution process. Claimant Project 44 Living Trust failed to complete the issue remark resolution process. The court set a show cause filing deadline for Project 44 Living Trust.

Issue

Should domestic claim 76D 143735-00 be dismissed?

Finding of fact

Domestic claim 76D 143735-00 should be dismissed.

Principles of law

1. 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. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates

the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

4. If the Montana Water Court cannot resolve issue remarks based upon information in the claim file or information available to the Court, claimants shall be required to confer with the DNRC to attempt resolution of the issue remarks. Claimants shall file documentation to resolve the issue remarks, and the DNRC shall submit recommendations regarding disposition of the issue remarks. Section 85-2-248(5), MCA.

5. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. If a claimant fails to comply with an Order issued by the Court in its review of issue remarks, the Court may amend the claim to conform with information found in the claim file and information before the Court. Section 85-2-248(9)(a),(b), MCA.

Analysis

Issue – duplicate filing issue remark resolution

Claimants were ordered to meet with DNRC to attempt resolution of the duplicate filing issue remark. On February 21, 2024, DNRC filed a Memorandum. DNRC visited with co-claimant Theodore G. Mott. DNRC recommended withdrawing claim 76D 143735-00 to resolve the duplicate filing issue remark. Enclosed with the DNRC Memorandum, in agreement with DNRC, was co-claimant Theodore G. Mott’s Request

to Withdraw Statement of Claim 76D 143735-00.

Project 44 Living Trust did not file written agreement with the request to withdraw claim 76D 143735-00 or the recommended withdrawal of the claim suggested by DNRC, thereby failing to complete the issue remark resolution process. An order was issued for Project 44 Living Trust to show cause why the claim should not be dismissed. The show cause order included the following language: "...failure to comply with this filing deadline will be viewed as acknowledgment that claim 76D 143735-00 should be dismissed." Project 44 Living Trust failed to comply with the show cause filing deadline.

Conclusions of law

Based upon the claim file, co-claimant Theodore G. Mott’s request to withdraw claim 76D 143735-00, DNRC’s recommendation to dismiss claim 76D 143735-00, and co-claimant Project 44 Living Trust’s failure to respond to court orders, claim 76D 143735-00 should be dismissed to resolve the duplicate filing issue remark.

Recommendations

Domestic claim 76D 143735-00 should be dismissed.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm dismissal of the claim in the state’s centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Project 44 Living Trust
% Patricia A Evans Ttee
55 Kootenai Dr
Libby MT 59923-9369

Theodore G. Mott
123 Kootenai Dr
Libby MT 59923

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 143735-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: THEODORE G MOTT
123 KOOTENAI DR
LIBBY, MT 59923

PROJECT 44 LIVING TRUST
% PATRICIA A EVANS TTEE
55 KOOTENAI DR
LIBBY, MT 59923-9369

Priority Date:

Type of Historical Right:

Purpose (Use): DOMESTIC

Flow Rate:

Volume:

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.