

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

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

CLAIMANTS: Marguerite J. Wilson; Bert A. Wilson

CASE 76D-0573-R-2024
76D 30124756

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

Claim 76D 30124756 received the following issue remarks in addition to others:

THE CLAIMED PLACE OF USE DOES NOT APPEAR TO BE USED FOR DOMESTIC IRRIGATION PURPOSES.

THIS CLAIM DOES NOT APPEAR TO MEET THE DEFINITION OF AN EXEMPT RIGHT UNDER SECTION 85-2-222(1), MCA.

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.

Upon review, the claim failed to meet the definition of an exempt claim eligible for filing between 2013 and 2019. Claimants Marguerite J. Wilson and Bert A. Wilson (“Wilsons”) were provided the opportunity to file evidence refuting the review of the record concerning domestic claim 76D 30124756. The order included language that if Wilsons did not file any evidence or information by the deadline, it would be deemed their agreement that claim 76D 30124756 was not an exempt claim eligible for filing during the exempt claim filing period and their agreement that the claim should be dismissed from the adjudication. Wilsons did not file any evidence or information by the deadline.

Issues

1. Is claim 76D 30124756 an exempt right pursuant to Section 85-2-222, MCA?
2. Should claim 76D 30124756 be dismissed from the adjudication?

Findings of fact

1. Claim 76D 30124756 does not meet the definition of an exempt right pursuant to Section 85-2-222, MCA.
2. Claim 76D 30124756 should be dismissed from the adjudication.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right exempt use is prima facie proof of its content. Section 85-2-222(3), MCA. Prima facie proof may be 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. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), 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.

6. “‘Existing right’ or ‘existing water right’ means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973.” Section 85-2-102(13), MCA.

7. Exempt rights are existing rights for stock or domestic use of groundwater or instream flow. Section 85-2-222(1), MCA.

Analysis

Issues 1 and 2 – claim 76D 30124756 exempt claim status; dismissal of claim

In 2013 and 2017, the Montana Legislature amended § 85-2-222, MCA, and provided for the filing of exempt claims subject to specified terms and conditions.

Exempt claims are existing rights for stock or domestic use of groundwater or instream flow. Section 85-2-222(1), MCA.

Statement of claim 76D 30124756 identifies irrigation of the grounds for a drive-in theatre as its use. Irrigation of the grounds of a drive-in theatre is not a domestic use and therefore not an exempt use identified by statute. Wilsons did not provide evidence overcoming the prima facie proof afforded the use identified by statement of claim 76D 30124756. Wilsons did not provide evidence to address or resolve the issue remarks questioning the claim's purpose and exempt claim status.

Conclusions of law

Based on information in the claim file and before the court, and the claimants' failure to comply with an order issued by the court, claim 76D 30124756 does not meet the definition of an exempt domestic claim pursuant to Section 85-2-222, MCA, and should be dismissed from the adjudication.

Recommendation

Claim 76D 30124756 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

Marguerite J. Wilson
Bert A. Wilson
23955 Country Rd 3
Loveland CO 80537

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

Water Right Number: 76D 30124756 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: BERT A WILSON
23955 COUNTRY RD 3
LOVELAND, CO 80537

MARGUERITE J WILSON
23955 COUNTRY RD 3
LOVELAND, CO 80537

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.