

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

CLAIMANT: Joyce W. Walder

CASE 76D-0584-R-2024

76D 30127072

76D 30127073

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

Domestic claim 76D 30127072 and stock claim 76D 30127073 received multiple issue remarks questioning the historical accuracy of the claims’ elements and their failure to meet the statutory definition of an exempt claim.

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. The issue remarks were not resolved through the objection process. Pursuant to § 85-2-248(11), MCA the court may not resolve an issue remark modifying a claim without agreement from the claimant. An order set a filing deadline for Joyce W. Walder to file evidence refuting the issue remark questioning the claims’ exempt claim status. The court order informed Joyce W. Walder that a lack of reply would be deemed her agreement that the claims are not exempt claims and that the claims should be dismissed from the adjudication. Joyce W. Walder did not file any evidence by the deadline.

Issue

Are claims 76D 30127072 and 76D 30127073 exempt rights pursuant to Section 85-2-222, MCA?

Findings of fact

1. Domestic claim 76D 30127072 and stock claim 76D 30127073 do not meet the definition of an exempt right pursuant to Section 85-2-222, MCA.
2. Domestic claim 76D 30127072 and stock claim 76D 30127073 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

Exempt claim status and dismissal of claims

The statements of claim identified a pipeline from the source, Lost Creek, as the means of diversion for the claims, and therefore the claims are not instream (direct from source). The claims examiner added an issue remark questioning the exempt status of each claim. Due to their pipeline means of diversion from Lost Creek, domestic claim

76D 30127072 and stock claim 76D 30127073 fail to meet the definition of an exempt claim.

Conclusions of law

Domestic claim 76D 30127072 and stock claim 76D 30127073 identify a pipeline as their means of diversion from the surface water source. The claims do not meet the definition of an exempt claim and should be dismissed from the adjudication.

Recommendations

Domestic claim 76D 30127072 and stock claim 76D 30127073 should be dismissed.

Post Decree Abstracts of Water Right Claim accompany this report to confirm dismissal of the claims in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Joyce W Walder
PO Box 454
Libby MT 59923

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

Water Right Number: 76D 30127072 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: JOYCE W WALDER
PO BOX 454
LIBBY, MT 59923

Priority Date:

Type of Historical Right:

Purpose (Use): DOMESTIC

Flow Rate:

Volume:

Source Name: LOST CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 76D 30127073 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: JOYCE W WALDER
PO BOX 454
LIBBY, MT 59923

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: LOST CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.