

Montana Water Court
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FILED

JUN 18 2020

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
WILLOW CREEK BASIN (41N)
PRELIMINARY DECREE

CLAIMANT: Elk Ridge Farms Inc.

CASE 41N-R21
41N 180892-00
41N 180896-00
41N 180897-00
41N 180914-00
41N 180915-00
41N 180928-00

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.

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. The above-captioned claims appeared in the Preliminary Decree for Willow Creek (Basin 41N) with issue remarks.

2. On August 15, 2019, the above-captioned claims were consolidated into Water Court Case 41N-R21. On September 16, 2019, a Status Conference was held, the Claimant failed to appear. The Claimant was ordered to work with the DNRC in an attempt to resolve the issue remarks, the Claimant never contacted the DNRC and the DNRC failed to provide recommendations for the resolution of the remarks.

3. On February 12, 2020, this Court issued an Order Setting Filing Deadline, detailing a list of potential modifications to the claims that would resolve the issue remarks. The Order stated that “[i]f the Claimant agrees with the modifications detailed above, no further information is needed. If Claimant does not agree with modifications, they shall file information or evidence with the Court by the deadline below.” The Order further stated that “[f]ailure to comply with this filing deadline will be viewed as agreement that the claims should be modified as discussed above”. Nothing was filed by the deadline.

4. Pursuant to the Order, the following modifications should be made to Claim No. 41N 180892-00:

Priority Date: ~~May 1, 1900~~ **March 29, 1924**

Type of Historical Right: ~~Filed~~ **Use**

5. Pursuant to the Order, the following modifications should be made to Claim No. 41N 180896-00:

Priority Date: ~~January 15, 1908~~ **March 29, 1924**

Type of Historical Right: ~~Filed~~ **Use**

6. Pursuant to the Order, the following modifications should be made to Claim No. 41N 180897-00:

Priority Date: ~~January 15, 1908~~ **March 29, 1924**

Type of Historical Right: ~~Filed~~ **Use**

7. Pursuant to the Order, the following modifications should be made to Claim No. 41N 180915-00:

Place of Use:

<u>ID</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWNW		8	35N	4E Liberty
		<u>N2NWNW</u>				

8. Pursuant to the Order, the following modifications should be made to Claim No. 41N 180928-00:

Type of Historical Right: ~~Filed~~ Use

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. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing, or fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R. Sanctions applied against claimants may include termination of the water right claim. Rule 22, W.R.Adj.R.

3. Active participation by water users, especially claimants, is imperative for the accuracy of the statewide adjudication effort. *In re Korman*, 2014 Mont. Water LEXIS 17, *6. Further, “[t]he time required to process these cases is extended substantially when litigants do not comply with deadlines imposed by the Court.” *Huntsman v. Huntsman Ranch Co.*, 2015 Mont. Water LEXIS 2, *6. It is within the power of this Court to terminate a water right claim if a claimant fails to participate. Rule 22, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The claimant has failed to participate meaningfully in this case, despite being given opportunity to do so. *See Order Consolidating Case and Order Setting Status Conference*, August 15, 2019; *Minutes and Order Setting Deadlines Pursuant to Section 85-2-248 (5), MCA*, September 17, 2019; *Order Setting Filing Deadline*, February 20,

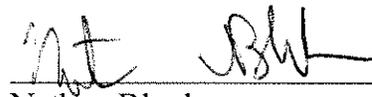
2020. Accordingly, the record supports the adoption of the modifications discussed above as a sanction for failing to comply with this Court's previous Orders and to resolve the issue remarks appearing on the claims.

RECOMMENDATIONS

1. Upon review the record in this case, the above-captioned claims should be modified as discussed above. The issue remarks should be removed from the claims.

Post Decree Abstracts of Water Right Claims are attached to this Master's Report for review.

DATED this 18th day of June, 2020.



Nathan Block
Water Master

Service via USPS Mail:

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