

Montana Water Court
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FILED

JUN 01 2020

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
ROCK CREEK BASIN (76E)
PRELIMINARY DECREE

CLAIMANT: Anthony L. Marletto Family Revocable Trust
OBJECTOR: United States of America (USDA Forest Service)

CASE 76E-R109
76E 134497-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. Because this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

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 this 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 United States of America (USDA – Forest Service) objected to Anthony L. Marletto Family Revocable Trust's irrigation claim 76E 134497-00.
2. Claim 76E 134497-00 was consolidated into Case 76E-R109.
3. On April 2, 2020, the Forest Service filed a Motion. The Motion explained "Although the place of use for 76E 134497-00 was part of the John Rodda Ranch, there is no evidence to support the use of this appropriation for irrigation on the property..." The Motion moved for an Order directing Claimant Anthony L. Marletto Family Revocable Trust to file documentation showing claim 76E 134497-00 has not been abandoned. The Forest Service based its Motion on the following information and documents:

- The notice of appropriation supporting claim 76E 134497-00 describes use for mining and other purposes on the placer claims in Quartz Gulch "near" the John Rodda Ranch, not on the Ranch.
- The placer claims in Quartz Gulch are currently owned by Nabob Holdings, not the Claimant. The point of diversion is on federal land in the National Forest system. There is no information in the file suggesting that the Claimant controls the point of diversions or the means of conveyance.
- The 1959 Water Resources Survey field notes indicate irrigation of the place of sue from Rock Creek and possibly a later appropriation from Stony Creek. The notes do not record irrigation of the place of use from the claimed appropriation from Stony Creek.
- The Water Resources Survey map for Township 7 North, Range 16 West does not show a ditch carrying water from the headwaters of Stony Creek to Quartz Gulch. It also shows the ditch from Stony Creek referenced in the field notes was downstream from the place of use.
- A flume and ditch carrying water from Stony Creek were built and developed in the 1900s for use by the American Gem Mining Syndicate on its placer claims in the area. The water rights for the system were claimed by Gem Mountain Sapphire Corp. in claims 76E 133064-00 and 76E 1330067 through 133082-00.
- In the adjudication of the Temporary Preliminary Decree, the United States objected to the American Gem Mining Syndicate claims on the grounds of abandonment. The August 15, 1984 states that "[t]he [Ranger] District knew of no diversions on Upper Stony Creek," that "[t]hese [claimed] diversions have been inoperative for years," and that no plan had been submitted to the Forest Service for "rebuilding the flume." Montana Department of Fish, Wildlife and Parks also objected on grounds of abandonment.
- The American Gem Mining Syndicate claims on Stony Creek were withdrawn in in Case 76E-38.

- On information and belief, the 2007 Sawmill Complex Fire burned the area where the historical diversion works were located.
- On information and belief, no application for permits to reconstruct the historical diversions on Upper Stony Creek have been submitted by the Claimant or any other party.

April 2, 2020 United States' Motion for an Order Setting Filing Deadline, *internal citations omitted*.

4. An Order Setting Filing Deadline was issued on April 7, 2020. The Order set a deadline for Claimant Anthony L. Marletto Family Revocable Trust to file documentation showing why claim 76E 134497-00 has not been abandoned for the reasons stated in the April 2, 2020 Motion. The Order stated if nothing is filed by the deadline, this Master would conclude the Claimant agrees claim 76E 134497-00 should be dismissed. The following language was also included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. Pursuant to Rule 22, W.R.Adj.R., 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 may issue such orders of sanction with regard thereto as are just.

3. The Claimant's failure to file documentation showing claim 76E 134497-00 has not been abandoned by the May 6, 2020 deadline indicates the Anthony L. Marletto Family Trust agrees claim 76E 134497-00 should be dismissed.

RECOMMENDATION

1. Claim 76E 134497-00 should be dismissed.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm the dismissal of the claim in the state's centralized record system.

DATED this 1st day of June, 2020.



Anika M. Stern
Senior Water Master

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