

Montana Water Court
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FILED

JUN 22 2020

Montana Water Court

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

CLAIMANTS: Bradley Liermann; Kathleen K. Martin; Larry J. Martin;
Susan M. Rangitsch; Susanne Stipich

76E-R32
76E 89-00

OBJECTOR: United States of America (USDA Forest Service)

ORDER REISSUING MASTER'S REPORT

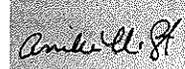
The Master's Report was issued on May 26, 2020; and it was recently determined that the service list was incomplete. Therefore, the Master's Report is being reissued. The Master's Report in Case 76E-R32 is attached to this Order.

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 reissued 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. **The deadline to object to the Master's Report will be based on the issuance date of this Order Reissuing Master's Report.**

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.

DATED this *22nd* day of *June*, 2020.

 Digitally signed
by Anika Stern

Anika M. Stern
Senior Water Master

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MAY 26 2020

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76E-R32
76E 89-00

OBJECTOR: United States of America (USDA Forest Service)

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. Irrigation claim 76E 89-00 appeared in the Basin 76E Preliminary Decree with the following DNRC issue remark:

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

The United States of America (Forest Service) objected to claim 76E 89-00 and it was consolidated into Case 76E-R32.

2. A deadline was set for the parties in the Case to file settlement documents. On April 1, 2020, Objector United States of America (Forest Service) filed a Status Report stating a draft stipulation was mailed to the Claimants, but the Claimants did not sign it.

3. According to the April 1, 2020 filing, the Forest Service's Objection will be resolved if the flow rate for claim 76E 89-00 is reduced from 7.00 cubic feet per second (cfs) to 4.43 cfs.

4. As it was unclear if the Claimants agreed or disagreed with the proposal to reduce the flow rate of claim 76E-89 to 4.43 cfs, a deadline was set. The Order Setting Filing Deadline stated if nothing is filed by the deadline, this Master will conclude the Claimants agree the flow rate for claim 76E 89-00 should be reduced from 7.00 cfs to 4.43 cfs and this Master will recommend dismissal of the Objection. The following language was 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.

RECOMMENDATIONS

1. The flow rate for claim 76E 89-00 should be reduced from 7.00 cfs to 4.43 cfs.
2. The Forest Service Objection to claim 76E 89-00 should be dismissed.
3. The issue remark should be removed from claim 76E-89.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the recommended changes have been made in the state's centralized record system.

DATED this 26th day of May, 2020.



Anika M. Stern
Senior Water Master

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