

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

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CLAIMANT: Ben Lou LLC

OBJECTORS: George B. Larango; United States of America (USDA  
Forest Service)

CASE 76E-R68  
76E 45448-00

**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. Irrigation claim 76E 45448-00 appeared in the Basin 76E Preliminary Decree with the following DNRC issue remark:

POINT OF DIVERSION 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.

ON DECEMBER 20, 1996 GEORGE B. LARANGO FILED AN OBJECTION TO THE PRIORITY DATE REQUESTING THAT IT BE CHANGED TO APRIL 14, 1909 BASED ON THE JULES GRATTEN NOTICE OF APPROPRIATION OF WATER RIGHT. THIS IS A LATE OBJECTION AND WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

2. On December 20, 1996, George B. Larango filed a late objection to claim 76E 45448-00. The United States of America (Forest Service) objected to claim 76E 45448-00. Claim 76E 45448-00 was consolidated into Case 76E-R68.

3. Representatives of Ben Lou LLC and the Forest Service appeared at Status Conference in this Case; Late Objector George Larango did not appear at the Status Conference. A deadline was set for the parties in Case 76E-R68 to file settlement documents or a status report.

4. On March 12, 2020, the Forest Service filed a Conditional Withdrawal of Objection withdrawing its Objection to claim 76E 45448-00, provided the issue-remark resolution process does not result in an over-appropriation or changes to elements other than priority date.

5. Claim 76E 45448-00 was claimed as a filed right with a July 29, 1971 priority date. A filed Notice of Appropriation supporting the claimed priority date was attached to the prima facie Statement of Claim.

6. No Motion was made to substitute another party as an Objector on behalf of George Larango.

7. As it appeared the issue remarks should be removed from claim 76E 45448-00 and George Larango's Late Objection should be dismissed with no changes to claim 76E 45448-00, an Order Setting Filing Deadline was issued. The Order stated if nothing is filed by the deadline, this Master would conclude the parties agree the issue remarks will be removed from claim 76E 45448-00 and no changes will be made to the elements of the claim. 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.

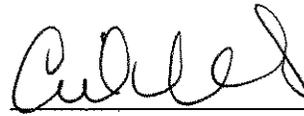
### RECOMMENDATIONS

1. George B. Larango's Late Objection to claim 76E 45448-00 should be dismissed.

2. The issue remarks should be removed from claim 76E 45448-00.

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 22<sup>nd</sup> day of June, 2020.



Anika M. Stern  
Senior Water Master

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