

Montana Water Court
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40A-0393-R-2021

December 28, 2021

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)
PRELIMINARY DECREE

CLAIMANTS: Rostad & Rostad Inc

OBJECTOR: Rostad & Rostad Inc

CASE 40A-0393-R-2021
40A 3105-00
40A 3106-00
40A 3109-00
40A 3110-00

ORDER AMENDING AND ADOPTING MASTER’S REPORT

I. INTRODUCTION

This case involves water rights owned by Rostad & Rostad Inc. (“Rostad”). Claims 40A 3105-00, 40A 3106-00, 40A 3109-00, and 40A 3110-00 appeared in the Preliminary Decree for Basin 40A. Claims 40A 3106-00, 40A 3109-00, and 40A 3110-00 received issue remarks regarding point of diversion during DNRC claims reexamination. Rostad, through their attorney Colleen A. Coyle of Coyle Law Firm PLLC, objected to all elements of claim 40A 3105-00. No other parties objected to claimant’s rights.

The Water Master consolidated this case and issued an order setting a deadline of October 8, 2021 for Rostad to supply information necessary to support their objection and address the issue remark on claim 40A 3106-00. The Master explained that if Rostad did not respond by the deadline, the Master would conclude they did not intend to prosecute their objection and would recommend dismissal of the objection in her Master’s Report.

The Water Master also indicated Rostad should file a statement addressing the issue remark on claim 40A 3106-00. The Water Master explained that failure to comply with the order could result in sanctions including dismissal of the objection.

Rostad did not file anything by the deadline in the Water Master's order and on October 20, 2021, the Water Master issued her report. The Master's Report recommended dismissal of Rostad's objection, removal of issue remarks, and further recommended that no changes be made to claim 40A 3106-00. The reason given by the Master for her recommendations was that Rostad had not complied with the deadline and failed to supply the information needed to support their objection and address the issue remark on claim 40A 3106-00.

After receiving the Master's Report, Rostad's attorney filed a Motion for Reconsideration. This motion repeated the text of the objection and included a hyperlink to the Crazy Mountain Museum and a screenshot from a Bureau of Land Management web page. Rostad agreed with the issue remarks regarding point of diversion and the change in point of diversion for claim 40A 3106-00.

Rostad's attorney did not acknowledge non-compliance with the Water Master's order, nor did she acknowledge that Rostad's objection was dismissed because the attorney failed to provide information in a timely manner. On December 15, 2021, long after the deadline for objections to the Master's Report passed, Rostad filed a Request for Hearing or Recommitment to Master. This latest filing seeks a hearing on the Master's Report under Rule 53(e)(2), M. R. Civ. P., or a recommitment of the case to the Master for further proceedings.

II. ISSUE

1. Did the Water Master properly dismiss Rostad's objection?

III. ANALYSIS

This Court reviews a master's conclusions of law to determine whether they are correct. *Heavirland v. State*, 2013 MT 313, ¶ 14, 372 Mont. 300, 311 P.3d 813 (citing *Geil v. Missoula Irr. Dist.*, 2002 MT 269, ¶ 22, 312 Mont. 320, 59 P.3d 398). "Thus, the Water Court reviews the Water Master's findings of fact for clear error and the Water

Master's conclusions of law for correctness." *Heavirland*, ¶ 14 (citing Rule 53(e)(2), M.R.Civ.P.; *Geil*, ¶ 22).

The Water Master recommended dismissal of Rostad's objection because their attorney did not comply with the Court's order. In making this decision, the Master relied on Rule 22, W.R.Adj.R. which authorizes dismissal of objections for failure to comply with orders issued by the Water Court. Determining whether sanctions are appropriate depends on whether the objectionable conduct represents an isolated mistake or a broader pattern, the impact of the conduct on the judicial process and other parties, recognition by the offending party that their conduct is problematic, and whether imposition of sanctions is needed to deter misconduct in the future. Ultimately, imposition of sanctions depends on the circumstances of each case and requires a reasonable balance of conduct and consequences.

Colleen Coyle's conduct in this case warrants the sanctions imposed by the Water Master. Ms. Coyle has been sanctioned repeatedly by the Water Court for failure to comply with statutory or Court-imposed deadlines. Example of cases in which sanctions have been imposed include an Order Rejecting Improperly Filed Notices of Intent to Appear in Basin 41G; Case 40C-0146-R-2019; Case 40A-0185-R-2021; Case 40A-0304-R-2019; Case 40A-0315-R-2019; Case 43B-0096-R-2020; Case 40A-394-R-2021; and Case 43B-0043-R-2020. The foregoing cases involved several Water Masters working in different basins at different times. These cases show Ms. Coyle's conduct in the present case is not a one-time event.

Ms. Coyle's broad pattern of misconduct has had a negative impact on the judicial process and on other parties. The time required to process cases increases when litigants do not comply with deadlines set by the Court. In each instance, the Court must issue orders that would not be needed if the offending party had simply done what the statutes, rules, or the Court's orders required.

The potential for waste of judicial resources and impacts to other parties also increases in cases like this one where a Master's Report has already been issued. Here,

the Court must consider whether to unwind what amounts to a final decision by the Water Master to protect the claimant from their attorney's misconduct.

The Water Court's record as a whole is filled with instances where the Court has reversed orders imposing sanctions. This Court has often vacated orders dismissing objections, terminating water rights, or imposing other sanctions when it became apparent that extenuating circumstances explained noncompliance.

The Water Court almost always defaults to leniency when mistakes are isolated, and a party accepts responsibility for their actions. Forgiveness of mistakes recognizes that humans are imperfect and that harsh punishment for the occasional error is inconsistent with fundamental notions of fairness. In addition, the Water Court strongly prefers resolution of water rights based on the merits as opposed to resolution of issues without participation by claimants or objectors.

At some point however, the Court cannot continue expending resources for the benefit of parties who repeatedly miss deadlines or ignore orders and who fail to acknowledge their misconduct and accept responsibility for it. The Court has a duty to all water users to complete the adjudication and issue final decrees. Although the Court will tolerate ordinary human error, it cannot tolerate serial failures to comply with orders or a pattern of conduct that shows disregard for other parties and the judicial process.

Ms. Coyle has shown disregard for the judicial system, other litigants, and her clients' welfare. She has missed repeated deadlines and failed to comply with multiple orders not only in this case, but in others before the Court. These actions have exposed her clients to modification or loss of their water rights, prevented them from pursuing objections, wasted substantial judicial resources, and impacted other parties. This conduct has continued for several years and has persisted despite multiple warnings that it stop. It does not constitute an isolated mistake.

On the contrary, this pattern of conduct is so pervasive that it fully justifies the imposition of sanctions, including dismissal of objections. The recommendations made in the Master's Report are reasonable and appropriate. To hold otherwise risks sending a

message that this Court tolerates misconduct and is willing to continue wasting significant resources accommodating an attorney who is unwilling to change.

The Master's Report is amended to correct the point of diversion resolving the DNRC issue remark for claim 40A 3106-00. The remaining Master's Report is adopted without modification.

The claim file for claim 40A 3106-00 contains a Water Resources Survey map with the point of diversion drawn in the NESWNE of Section 28, T7N, R9E in Meagher County. A post decree abstract of claim 40A 3106-00 reflecting the correct point of diversion is attached to this Order.

Ms. Coyle also filed a Request for Hearing or Recommitment to Master on December 15, 2021. Ms. Coyle seeks a hearing on her objection to the master's report under Rule 53(e)(2), M. R. Civ. P. This rule requires that an objection to a master's report be filed "[w]ithin ten days after being served with notice of filing of the report...."

This latter document was filed almost two months after the master's report was filed. The Request for Hearing or Recommitment to Master filed on December 15, 2021, was untimely and is therefore denied.

This case is closed.

Russ McElyea
Chief Water Judge

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**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A**

Water Right Number: 40A 3106-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: ROSTAD & ROSTAD INC
721 ST. ANDREWS DRIVE
BOZEMAN, MT 59715

Priority Date: AUGUST 26, 1885

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 11.21 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 296.00

Source Name: BOZEMAN FORK MUSSELSHELL RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNE	28	7N	9E	MEAGHER

Period of Diversion: APRIL 1 TO SEPTEMBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO SEPTEMBER 15

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	28.00		SWSW	9	7N	9E	MEAGHER
2	228.00			16	7N	9E	MEAGHER
3	20.00		NENE	17	7N	9E	MEAGHER
4	20.00		NWNE	21	7N	9E	MEAGHER
Total:	<u>296.00</u>						