

43C-0146-A-2021

December 21, 2021

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
STILLWATER RIVER BASIN (43C)

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CLAIMANT: Christy M. Walta; Peder Fenelon

CASE 43C-0146-A-2021
43C 12176-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's 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. If you file an objection, you must serve 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. Claim 43C 12176-00 is a 4.5 gpm irrigation right from Rosebud Creek.
2. On August 9, 2021, Christy Walta filed a form requesting to withdraw claim 43C 12176-00 from the adjudication. On October 29, 2021, Christy Walta filed another form requesting to withdraw claim 43C 12176-00.
3. Claim 43C 12176-00 is owned by Christy Walta and Peder Fenelon. Peder Fenelon did not sign the forms requesting to withdraw claim 43C 12176-00.
4. Peder Fenelon was given an opportunity to indicate his position on the requested withdrawal of claim 43C 12176-00. A November 19, 2021 Order Setting Filing Deadline ordered that if nothing was filed by the deadline, the court would conclude that Peder Fenelon agrees that claim 43C 12176-00 should be dismissed from the adjudication. Nothing was filed by the deadline. Accordingly, claim 43C 12176-00 should be dismissed from the adjudication.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is *prima facie* proof of its content. § 85-2-227, MCA.
2. If a claimant agrees to reduce or limit an element of a claim, the water court may accept the claimant's requested reduction or limitation without further presentation of evidence. Rule 17(c), W.R.Adj.R. The requested withdrawal of claim 43C 12176-00 may be accepted without any presentation of evidence.
3. If a claimant 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. Sanctions applied against claimants may include termination of the claim; or modification of the claim to conform with the best information before the court. Rule 22, W.R.Adj.R. Claimant Peder Fenelon did not respond to the court's order setting filing deadline. The claim will be modified to conform with the best information before the court.

RECOMMENDATIONS

1. Claim 43C 12176-00 should be dismissed from the adjudication.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the claim is shown as dismissed in the centralized database.

Madeleine Weisz
Senior Water Master

Service via USPS Mail:

Christy M. Walta
PO Box 792
Absarokee, MT 59001-0792

Peder Fenelon
Po Box 792
Absarokee, MT 59001-0792

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
STILLWATER RIVER
BASIN 43C**

Water Right Number: **43C 12176-00 STATEMENT OF CLAIM**

Version: **2 -- POST DECREE**

Status: **DISMISSED**

Owners:
PEDER FENELON
PO BOX 792
ABSAROKEE, MT 59001 0792

CHRISTY M WALTA
PO BOX 792
ABSAROKEE, MT 59001 0792

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (Use): **IRRIGATION**

Flow Rate:

Volume:

Source Name: **ROSEBUD CREEK**

Source Type: **SURFACE WATER**

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.