

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
SHIELDS RIVER BASIN
43A PRELIMINARY
DECREE

* * * * *

CLAIMANT: Monzer Hourani	CASE 43A-0079-R-2020
OBJECTOR: United States of America (Department of Agriculture Forest Service)	43A 191292-00

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

The above-captioned claim received an objection from U.S.D.A. Forest Service, ("Forest Service") based on potential abandonment of the claim. Claim 43A 191292-00 also received issue remarks from the DNRC.

In order to resolve the objection and issue remarks, claim 43A 191292-00 was consolidated into Water Court case 43A-0079-R-2020.

FINDINGS OF FACT

1. A Status Conference for Case 43A-0079-R-2020 took place on September 22, 2020, by telephone conference call. Water Master Eugene C. White presided; Jim Dubois was present on behalf of the United States of America ("Forest Service"); Claimant Monzer Hourani did not appear. During the conference, Mr. Dubois explained the basis of the Forest Service's objection as potential abandonment of the claim.

2. Claimant Monzer Hourani requested the Case be placed on a hearing track in a *Request for Hearing* filed November 30, 2020. However, prior to the Case being placed on a hearing track, Claimant filed an *Unopposed Motion for Continuance* on December 1, 2020, which they requested to supersede the *Request for Hearing* filed the previous day.

3. In an Order issued on December 12, 2020, the Court granted the *Unopposed Request for Continuance*, and set a filing deadline for the parties to file settlement documents of March 10, 2021.

4. The Forest Service filed a *Status Report* on May 26, 2021 in which it requested a hearing track due to lack of settlement discussion progress.

5. On June 15, 2021, the Court placed the Case on a hearing track issuing a *Scheduling Order*. In response to the Court's *Scheduling Order*, Claimant filed an *Unopposed Motion to Vacate Hearing Track and Set Settlement Deadline*. The Court granted Claimant's *Motion* and vacated the hearing track in an Order issued on August 3, 2021 and reset a filing deadline for the parties to file settlement documents resolving the objection.

6. On October 27, 2021, the Forest Service filed a *Status Report* stating that they had not received any of the requested information from the Claimant. Claimant Monzer Hourani did not file a *Status Report* or any other documentation with the Court by the filing deadline of October 27, 2021.

7. A Scheduling Order was issued on November 23, 2021 placing the case on a hearing track.

8. The Forest Service filed its *Motion for Summary Judgement* on May 17, 2022. The MSJ states that because the Claimant failed to respond to discovery requests served by the Forest Service, they should be deemed to have admitted facts sufficient to prove the claim does not describe a valid pre-1973 water right.

9. On June 7, 2022, Claimant Monzer Hourani filed a *Response* to the Forest Service's MSJ. The *Response* states that Claimant Monzer Hourani concedes the summary judgement sought by the Forest Service.

PRINCIPLES 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; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

5. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

6. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section

85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

7. The party seeking to overcome the prima facie status of a Statement of Claim bears the burden of proof; this burden also applies to a claimant's objection to his own claim. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

8. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

9. Montana Rules of Civil Procedure, Rule 36, provides in relevant part "[a] party may serve on any other party a written request to admit . . . the truth of any matters within the scope of Rule 26(b)(1) relating to . . . facts. . . ." M.R.Civ.P., Rule 36(a)(1). Rule 36 also states "[a] matter is admitted unless, within 30 days after being served, the party to who the request is directed serves on the requesting party a written answer or objection addressed to the matter" M.R.Civ.P., Rule 36(a)(3).

10. The Montana Water Court has jurisdiction over all matters relating to the determination of existing water rights. § 3-7-224, MCA; Rule 1, W.R.Adj.R. This jurisdiction includes authority over the resolution of issue remarks and objections filed by other water users, but also includes broad authority to issue orders "on its own motion as may be reasonably required to allow it to determine whether a claim accurately reflects its claimed pre-July 1, 1973 beneficial use." Rule 8, W.R.Adj.R.

CONCLUSIONS OF LAW

1. Based on the Claimants' failure to respond to the Forest Service's discovery requests within the time provided by M.R.Civ.P., Rule 36(a)(3), and the resulting summary judgement granted for the Forest Service, the claim should be terminated due to non-perfection and/or abandonment.+

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

Eugene C. White
Water Master

Service via Electronic Mail

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WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
SHIELDS RIVER
BASIN 43A

Water Right Number: **43A 191292-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: MONZER HOURANI
 7670 WOODWAY SUITE 160
 HOUSTON, TX 77063

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (use): IRRIGATION

Flow Rate:

Volume:

Source Name: DEEP 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.