

Montana Water Court
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FILED
10/03/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0757-R-2022
Lambert, Kathryn
7.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Fiona L. West

CASE 43B-0757-R-2022
43B 195184-00

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 finding 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 to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. 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 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

This claim appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

This remark was not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA. Under Section 85-2-

248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence.

The November 3, 2022 Order Consolidating Case And Setting Scheduling Conference set a scheduling conference For December 1, 2022 at 9:30 am. The claimant did not appear.

The December 1, 2022 Court Minutes, Order Entering Default, and Order Setting Filing Deadline set a January 31, 2023 deadline for the claimant to file documentation addressing and resolving the issue remark. The claimant filed nothing.

The February 8, 2023 Order Entering Default and Order Setting Deadlines Pursuant To Section 8-2-248(5), MCA set various deadlines for the claimant to contact the Bozeman Regional Office, Montana Department of Natural Resources and Conservation [“DNRC”], and for the claimant and DNRC to file their proposed resolution of the issue remark. The claimant filed nothing.

The May 24, 2023 DNRC Memorandum states that the claimant did not contact the DNRC, that the DNRC cannot locate a headgate or conveyance structure, and that it cannot make any recommendation to resolve the issue remark. The Memorandum also notes that there may be two other possible owners. The June 1, 2023 Order Entering Default and Order Setting Ownership Update Filing Deadline was sent to the two possible owners. No ownership updates were filed.

The August 7, 2023 Order Updating Mailing List and Order Setting Show Cause Filing Deadline states that no ownership updates were filed, that the Court concludes they determined they do not have an ownership interest in this claim, and removed the two possible owners from the mailing list. The balance of this Order recaps the history of the proceedings in this Case and sets a date for the claimant to show cause why this claim should not be dismissed, as follows:

Section 85-2-234(6)(a), MCA, states “the final decree must state . . . the place and means of diversion.”

This claim appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

“All issue remarks to claims that are not resolved through the filing of an

objection as provided in 85-2-233 must be resolved as provided in this section.”
Section 85-2-248(2), MCA.

Section 85-2-248(9)(d), MCA, states in part:

(9) If a claimant . . . fails to comply with an order issued by the water court in its review of issue remarks, the water court upon motion or its own initiative, may, in its ruling:

(d) terminate the claim.

Rule 22, W.R.Adj.R., states in part:

RULE 22. SANCTIONS. If a claimant . . . fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Sanctions applied against claimants may include termination of the claim.

The December 1, 2022 Court Minutes, Order Entering Default, and Order Setting Filing Deadline states:

The scheduling conference was not held on December 1, 2022 at 9:30 am as set in the November 13, 2022 Order Consolidating Case And Setting Scheduling Conference as Fiona L. West failed to appear. Pursuant to Rule 55(a), M.R.Civ.P. and Rule 22, W.R.Adj.R., it is

ORDERED that the default of Fiona L. West is ENTERED. The Court will not take any action at this time concerning the default.

Pursuant to section 85-2-248(3), MCA, it is

ORDERED that the deadline for Fiona L. West to file documentation fully resolving the issue remark is **January 31, 2023.**

Nothing was filed.

The February 8, 2023 Order Entering Default and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA states:

The December 1, 2022 Court Minutes, Order Entering Default, and Order Setting Filing Deadline set a January 31, 2023 deadline for the claimant to file documentation resolving the issue remark. Nothing was filed.

As Fiona L. West did not comply with the December 1, 2022 Order Setting Filing Deadline, pursuant to Rule 55(a), M.R.Civ.P. and Rule 22, W.R.Adj.R., it is

ORDERED that the default of Fiona L. West is ENTERED.

This Order set a March 10, 2023 deadline for Fiona L. West to contact the DNRC and a May 10, 2023 deadline for her to file documentation resolving the issue remark. Nothing was filed by Fiona L. West.

The May 24, 2023 DNRC Memorandum states that Fiona L. West never contacted the DNRC and states:

The DNRC reviewed both 1977 aerial imagery and WRS aerial imagery in an attempt to determine the location of the point of

diversion (POD). ***No visible headgate or conveyance structure was found in any of the aerial imagery available to DNRC.***

Without more information, DNRC cannot make a recommendation for the resolution of this issue remark.

(***Emphasis*** added.) The DNRC Memorandum was sent to Fiona L. West at a Miami Beach, FL address and a Livingston, MT address. This did not prompt any response or enquiry from Fiona L. West.

The June 1, 2023 Order Entering Default states:

The February 8, 2023 Order Entering Default and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA set a March 10, 2023 deadline for Fiona L. West to contact the DNRC and a May 10, 2023 deadline for her to file documentation resolving the issue remark. She did neither. As Fiona L. West did not comply with the February 8, 2023 Order Setting Filing Deadlines Pursuant To Section 85-2-248(5), MCA, pursuant to Rule 55(a), M.R.Civ.P. and Rule 22, W.R.Adj.R., it is

ORDERED that the default of Fiona L. West is ENTERED a second time.

This is not the second entry of default. It is the third entry of default of Fiona L. West in this Court's effort to address and resolve the point of diversion issue remark pursuant to section 85-2-248, MCA. Therefore, as the final decree must include a point of diversion and means of diversion and as those elements are unknown, pursuant to section 85-2-248, MCA, it is

ORDERED that the deadline is **September 7, 2023** for Fiona L. West to show cause in writing why the Court should not dismiss claim 43B 195184-00 for her repeated failures to comply with Court Orders issued to address and resolve the point of diversion issue remark. If not filed by September 7, 2023 the Court will conclude that Fiona L. West agrees claim 43B 195184-00 should be dismissed, and will proceed with dismissing the claim pursuant to section 85-2-248(9), MCA, and Rule 22, W.R.Adj.R.

The claimant filed nothing. These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

Sections 85-2-248(9)(d), MCA, states in part:

(9) If a claimant . . . fails to comply with an order issued by the water court in its review of issue remarks, the water court upon motion or its own initiative, may, in its ruling:

(d) terminate the claim.

Rule 22, W.R.Adj.R., states in part:

RULE 22. SANCTIONS. If a claimant . . . fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Sanctions applied against claimants may include termination of the claim.

FINDING OF FACT

Fiona L. West failed to show cause in writing why the Court should not dismiss claim 43B 195184-00 for her repeated failures to comply with Court Orders issued to address and resolve the point of diversion issue remark.

CONCLUSION OF LAW

The DNRC Memorandum and the failure of the claimant to show cause in writing why the Court should not dismiss claim 43B 195184-00 for her repeated failures to comply with Court Orders issued to address and resolve the point of diversion issue remark, are sufficient to terminate claim 43B 195184-00. Section 85-2-248(9)(d), MCA, and Rule 22, W.R.Adj.R.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court terminate claim 43B 195184-00 pursuant to section 85-2-248(9)(d), MCA, and Rule 22, W.R.Adj.R. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended termination has been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Fiona L. West
11 Island Ave Apt 2012
Miami Beach, FL 33139

Possible Alternate Address:

Fiona L. West
310 Convict Grade Rd
Livingston, MT 59047

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: **43B 195184-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: FIONA L WEST
 310 CONVICT GRADE RD.
 LIVINGSTON, MT 59047

Priority Date:

Type of Historical Right:

Purpose (use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

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.