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

\* \* \* \* \*

CLAIMANT: Jay C. Lyndes

**CASE 43B-0792-R-2022**

43B 32247-00

**ORDER DENYING MOTION TO AMEND**

**BACKGROUND**

On October 16, 2023, Jay C. Lyndes (“Lyndes”) filed a Verified Motion to Amend Water Right Claim 43B 32247-00. The motion asks the Court to modify the place of use and point of diversion elements of the claim.

The Water Court included claim 43B 32247-00 in the Preliminary Decree for Basin 43B, issued on May 9, 2019. Issuance of the decree opened an objection period. As part of issuing the decree, the Water Court sent notice to all water right owners in the basin. The notice contained specific instructions about how to file an objection. The notice also stated the objection period would close on November 5, 2019. The Court later extended this deadline to December 5, 2019.

The Preliminary Decree included abstracts of the water right claims subject to the decree, including an abstract for claim 43B 32247-00. The abstract identified Lyndes as the owner of the claim. Lyndes did not file an objection by the objection deadline.

The Preliminary Decree abstract for claim 43B 32247-00 included an issue remark identifying a potential concern with the legal land description for the point of diversion. The senior water master assigned to Basin 43B consolidated claim 43B 32247-00 into this case to resolve the issue remark. The consolidation order set a deadline for Lyndes to file information to resolve the remark, or to provide additional information or evidence. Lyndes did not file anything by the specified deadline. The water master then issued an order for Lyndes to show cause as to why the claim should not be modified as specified in the issue remark. Again Lyndes did not file anything.

On March 15, 2023, the water master issued a Master's Report. The Master's Report recited the procedural history. The report recommended a correction to the point of diversion legal description. The water master sent the report to Lyndes with a statement that if a timely objection to the report was not filed, "the Water Court will conclude you agree with the content of the Master's Report." Lyndes did not object, so the Court adopted the report in an order dated April 4, 2023. Lyndes filed the motion to amend more than five months later.

## **DISCUSSION**

The procedures the Water Court follows to adjudicate water right claims are specified in the Water Use Act and the Court's adjudication rules. After the Court issues a decree, parties may file objections to claims. The Act requires that objections "be filed with the water judge within 180 days after entry of the temporary preliminary decree, preliminary decree, or supplemental preliminary decree." Section 85-2-233(2), MCA. The Act allows for extensions of the objection deadline, as was done with Basin 43B, but extensions do not change the mandatory obligation to file all objections within the objection period.

The Water Use Act also authorizes a claimant to move to amend a water right claim. Section 85-2-233(6), MCA. Unlike objections, the Act does not set specific

deadlines to file motions to amend, nor does it always bar them after issuance of a preliminary decree. Although the Act does not prohibit post-preliminary decree motions to amend, it also does not authorize them in all circumstances. The motion to amend statute provision is part of the same code section as the objection provisions. Section 85-2-233, MCA. When construing the motion to amend statute, the Court must “harmonize it in such a way as to not nullify the objection provisions of the statute.” *In re Brewer Ranch LLC*, Case 41I-2003-R-2023, 2023 Mont. Water LEXIS 393, \*7. This means the Court will scrutinize a post-objection period motion to amend to determine whether it could have been filed within the objection period. If so, the Court may reject the motion as a disguised untimely objection. *Brewer Ranch*; see also *In re Sieben Livestock Co.*, 41I-2002-R-2023, 2023 Mont. Water LEXIS 390, \*6 (May 4, 2023) This interpretation is necessary to “avoid creating a large loophole” to the decree objection process. *In re Open Cross Ranch, Inc.*, 2019 Mont. Water LEXIS 7, \*5-6.

Against this backdrop, the Court must deny Lyndes’ motion. The motion contains no information to indicate why the issues it raises could not have been raised by filing a timely self-objection. The motion cites no new information that came to light after the decree. The motion also cites no information that Lyndes did not receive notice of the decree or the objection deadlines.

Had Lyndes timely objected, the objections would have been put on the Basin 43B objection list with notice given to other water users who might believe it necessary to appear in proceedings to resolve the objection. W.R.Adj.R. 9. If the Court now allows the motion, the objection list and notice of intent to appear process will have been bypassed and the Court will have to address whether a new notice process must be initiated under the provisions of § 85-2-233(6)(a)(i), MCA. Absent a compelling reason why a timely objection was not filed, the Court does not interpret this statute as a mechanism to essentially reopen the objection period. Lyndes’ motion provides no reason to consider amendments that could have been raised during the statutory objection period.

Lyndes’ motion also is not well taken in light of the failure to respond to orders issued by the senior water master. The master gave Lyndes at least three opportunities, all

with specific deadlines: (1) upon consolidation and the order setting filing deadline (Doc. 1.00); (2) upon issuance of the show cause deadline (Doc. 2.00); and (3) upon issuance of the Master's Report (Doc. 3.00). Lyndes' motion contains no explanation for the lack of any timely response to any of these orders. The motion also fails to explain why Lyndes did not object to the Master's Report.

Parties often file motions to amend as the procedural mechanism to resolve timely-filed objections or issue remarks, and nothing in this Order should be construed as foreclosing that process in the future. However, Lyndes' motion does not fit that scenario. Once deadlines run and cases close, the motion to amend statute is not intended to cure missed procedural opportunities. Lyndes was given ample opportunity to raise these issues and he let those opportunities pass. Under these circumstances, the Court must deny the motion.

## **ORDER**

Therefore, it is ORDERED that the Verified Motion to Amend is DENIED.

## **ELECTRONICALLY SIGNED AND DATED BELOW.**

### Service Via USPS Mail:

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