

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
KOOTENAI RIVER BASIN (76D)
PRELIMINARY DECREE

CLAIMANT: Halfway House Bar & Grill LLC

CASE 76D-0284-R-2023
76D 143754-00

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, conclusions 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

Statement of the case

The above captioned domestic claim appeared in the Preliminary Decree with issue remarks including a remark stating:

DNRC EXAMINATION WAS UNABLE TO CONFIRM USE OF THIS WATER RIGHT FOR THE TEN CONSECUTIVE YEARS PRIOR TO JULY 1, 1973.

Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

Montana law requires the Water Court to resolve issue remarks. Claimant failed to complete the issue remark resolution process. The court set a show cause filing deadline for the claimant.

Issue

Should domestic claim 76D 143754-00 be dismissed?

Findings of fact

1. On July 14, 2023, DNRC filed a Memorandum concerning claimant’s lack of participation and completion of the issue remark resolution process. DNRC recommended dismissal of domestic claim 76D 143754-00 due to nonperfection.

2. The court reviewed the claim file and the July 14, 2023 DNRC Memorandum and issued an order for claimant to show cause why the claim should not be dismissed. Claimant failed to comply with the show cause filing deadline.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. When resolving issue remarks, the Montana 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.

4. If the Montana Water Court cannot resolve issue remarks based upon information in the claim file or information available to the Court, claimants shall be required to confer with the DNRC to attempt resolution of the issue remarks. Claimants shall file documentation to resolve the issue remarks, and the DNRC shall submit recommendations regarding disposition of the issue remarks. Section 85-2-248(5), MCA.

5. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

6. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders

issued by a Master appointed by the Court. If a claimant fails to comply with an Order issued by the Court in its review of issue remarks, the Court may amend the claim to conform with information found in the claim file and information before the Court. Section 85-2-248(9)(a),(b), MCA.

Analysis

Dismissal of claim 76D 143754-00

Claimant, Halfway House Bar & Grill LLC, was ordered to meet with the DNRC to attempt resolution of the issue remarks appearing on domestic claim 76D 143754-00. DNRC reported it reviewed the claim file and a 1979 aerial photo. The means of diversion identified by the statement of claim includes the following written notation, “not developed yet” and the priority date identified by the statement of claim includes the following written notation, “bought February 2, 1979” and “not used as yet.” The 1979 aerial photo does not depict domestic use. DNRC recommended dismissal of domestic claim 76D 143754-00 as it was not perfected before July 1, 1973.

Claimant was given the opportunity to respond to the suggested dismissal of the claim. Claimant’s failure to provide any evidence to address or resolve the nonperfection issue remark left DNRC’s review and the claim file as strong evidence of nonperfection.

DNRC’s Memorandum included the 1979 aerial photo depicting the claimed place of use. The DNRC Memorandum and aerial photo may be viewed on the court’s case management system, FullCourt Enterprise, at document sequence 2.00.

Conclusions of law

Based upon the nonperfection issue remark on claim 76D 143754-00, information in the claim file, and the DNRC’s discussion and recommendation, the claim should be dismissed. Dismissal of the claim moots all issue remarks appearing on the claim abstract.

Recommendations

Domestic claim 76D 143754-00 should be dismissed.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm dismissal of the claim in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Halfway House Bar & Grill LLC
14891 Bull Lake Rd
Troy, MT 59935

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 143754-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: HALFWAY HOUSE BAR & GRILL LLC
14891 BULL LAKE RD
TROY, MT 59935

Priority Date:

Type of Historical Right:

Purpose (use): DOMESTIC

Flow Rate:

Volume:

Source Name: LAKE 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.