

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MADISON RIVER BASIN (41F)

CLAIMANT: Spanish Q Inc.	41F-0002-R-2024
OBJECTORS: Moores Creek Road LLC; United States of America (Bureau of Reclamation)	41F 136335-00 41F 136336-00 41F 136337-00 41F 136338-00
COUNTEROBJECTOR: Ennis Moores Creek LLC	41F 136339-00 41F 136340-00

ORDER ON MOTION TO DISMISS COUNTEROBJECTIONS

BACKGROUND

The Water Court reissued the Preliminary Decree for Basin 41F, the Madison River Basin on July 26, 2023. Reissuance of the Preliminary Decree set January 22, 2024 as the deadline to file objections to claims included in the decree.

On January 22, 2024, the same day as the objection deadline, Spanish Q Family Partners LLLP (“SQFP”) filed objections to water right claims 41F 122649-00, 41F 122650-00, 41F 122651-00, 41F 122652-00, 41F 122653-00, 41F 122654-00, 41F 122655-00, 41F 122656-00, 41F 122657-00, and 41F 122658-00. The Preliminary Decree identifies SQFP, 4V Group LLC; and Ennis Moores Creek LLC (“EMC”) as joint owners of each of the ten claims in this group.

After the objection period closed, the Water Court sent notices to each of the joint owners that objections had been filed to each of the claims. The notices described the opportunity to file counterobjections with deadline of April 30, 2024.

On April 29, 2024, EMC filed counterobjections to water right claims 41F 136335-00, 41F 136336-00, 41F 136337-00, 41F 136338-00, 41F 136339-00, and 41F 136340-00.¹ The Preliminary Decree identifies Spanish Q Inc. (“Spanish Q”) as the sole owner of each of the claims in this group. On each of the counterobjection forms, EMC lists the name of the target water right claim owner as “Spanish Q Inc*.” Each form also contains a note that states: “*Water right is appurtenant to land owned by Spanish Q Family Partners LLLP, who objected to Ennis Moores Creek LLC.”

On May 13, 2024, Spanish Q moved to dismiss each of EMC’s counterobjections on the grounds that Spanish Q did not file objections to any of EMC’s claims, or to any other claims in Basin 41F. Spanish Q bases its motion on a strict reading of the counterobjection statute, which states:

(3) Upon expiration of the time for filing objections under subsection (2), the water judge shall notify each party whose claim received an objection that an objection was filed. The notice must set forth the name of each objector and must allow an additional 60 days *for the party whose claim received an objection to file a counterobjection to the claim or claims of the objector*. Counterobjections must be limited to those claims that are included within the particular decree issued by the court.

Section 85-2-233(3), MCA (emphasis added).²

Spanish Q argues that under the plain language of the statute, a counterobjection only may be filed to “the claim or claims of the objector.” Spanish Q maintains it cannot be the subject of counterobjections from EMC because Spanish Q did not object to any of EMC’s claims.

EMC responds that SQFP, not Spanish Q is the actual owner of the group of claims EMC counterobjected to. As support, EMC filed several deeds that show the chain of title to the place of use vests title with SQFP. Because SQFP filed objections to EMC’s claims, EMC argues it meets the statutory prerequisite to file counterobjections.

¹ EMC also filed counterobjections to the claims in the first group (41F 122649-00, 41F 122650-00, 41F 122651-00, 41F 122652-00, 41F 122653-00, 41F 122654-00, 41F 122655-00, 41F 122656-00, 41F 122657-00, and 41F 122658-00). Neither Spanish Q nor SQFP moved to dismiss these counterobjections.

² The adjudication rules largely replicate the statute and requires that counterobjections be filed in compliance with the statute. Rule 6(b), W.R.Adj.R.

In its reply, Spanish Q does not dispute the deeds, nor does it produce any other evidence to call into question the facts EMC alleges. Instead, Spanish Q argues the abstracts included with the Preliminary Decree establish the status of water right claim ownership for purposes of the counterobjection statute. Spanish Q argues that if EMC disputed that ownership, it should have filed a timely objection.

DISCUSSION

The Court recently explained the purpose of the counterobjection statute as follows:

The ability to file a counterobjection did not exist when the Water Use Act was initially passed. Counterobjections were added to the adjudication process because some objectors were waiting to the last day of the objection period to object to their neighbor's water rights. Sometimes, those objectors owned claims with notable problems. By waiting until the end of the objection period, the owners of such claims could avoid challenges to their own rights while attacking those held by others. To prevent sandbagging and promote a more accurate adjudication, the legislature created a counterobjection period which enabled a person receiving an objection to counterobject to any water right held by the objector.

Nelson v. Blanchette, 2023 Mont. Water LEXIS 482, *3; *see also, In re Erb*, 2016 Mont. Water LEXIS 2, *4 (describing history and purpose of counterobjection process).

If the Court concludes a counterobjection deviates from these purposes, the Court may reject the counterobjection. *See, e.g. In re Brewer Ranch LLC*, Case 41I-2003-R-2023; Mont. Water LEXIS 393 (counterobjection not filed in response to objection). However, the Court does not rigidly apply the statute when it conflicts with standards such as the real party in interest rule. *See In re Burnt Hollow LLC*, 2023 Mont. Water LEXIS 1015.

In this case, the chain of title EMC filed, and that Spanish Q does not dispute, resolves the question. The deeds EMC filed show Spanish Q conveyed to Greg and Karen Rice the land described in the water rights EMC counterobjected to. There is nothing to indicate Spanish Q severed and reserved the water rights. Likewise, the Rices subsequently conveyed the property to SQFP, again without severing and reserving water rights. These facts are enough to support EMC's contention that SQFP is the actual

owner of the water rights by operation of law. Section 85-2-403(1), MCA. Because Spanish Q identifies no other water rights that support its objection, EMC alleges sufficient un rebutted facts to support its contention that SQFP is the actual owner of the water rights used to support Spanish Q's objections. That is enough to allow EMC to counterobject to the water rights even though they technically still are identified in the State's water rights database as being in Spanish Q's name.

In reaching this conclusion, the Court is mindful of the risk of allowing claimants to use the counterobjections as a mechanism to cure the failure to file a timely objection. That concern does not exist here. EMC alleges, and Spanish Q does not dispute, the chain of title to the pertinent claims puts ownership in SQFP, not Spanish Q. EMC has alleged sufficient un rebutted facts to show SQFP is the real party in interest as to the water rights that support SQFP's objections, analogous to the result reached in *In re Burnt Hollow LLC*. EMC properly noted this ownership discrepancy on its counterobjection forms. Spanish Q should not be allowed to shield itself from counterobjections by apparently failing to properly file ownership update forms when it conveyed real property with appurtenant water rights. See § 85-2-424, MCA (requiring ownership updates as part of real property transfers). Additionally, although Spanish Q is correct that EMC could have avoided this dispute by filing timely objections, that situation exists with all counterobjections. Tellingly, SQFP filed its objections on the last day of the objection period. As the Water Court explained in *Nelson v. Blanchette*, objections filed on the last day of an objection period is one of the bases the Legislature used to justify counterobjections.

ORDER

Therefore, it is ORDERED, that the Motion to Dismiss Counterobjections filed by Spanish Q Inc. is DENIED.

This case is CLOSED and the claims are recommitted to senior water master Anna Stradley for further proceedings following the close of the notice of intent to appear period.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail

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