

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

CLAIMANTS: Serena L. Rehl; Robert S. Rehl

CASE 76D-0532-R-2023

76D 30116353

76D 30116354

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 claims appeared in the Preliminary Decree with the following issue remarks:

Stock claim 76D 30116353

NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.

CLAIM WAS NOT INCLUDED IN THE BASIN 76D TEMPORARY PRELIMINARY DECREE ISSUED 03/22/84.

Domestic claim 76D 30116354

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 76D DECREE ISSUED 03/22/1984.

NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.

USDA AERIAL PHOTOGRAPH NO(S). 279-237, DATED 8/9/1979, APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

THE CLAIMED PLACE OF USE DOES NOT APPEAR TO BE USED FOR DOMESTIC IRRIGATION PURPOSES.

THE CLAIMED VOLUME WAS NOT EXAMINED. THE CLAIMED NUMBER OF HOUSEHOLDS AND ACRES OF DOMESTIC IRRIGATION COULD NOT BE IDENTIFIED.

NO VOLUME HAS BEEN CLAIMED.

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. Claimants, Serena L. Rehl and Robert S. Rehl, failed to complete the issue remark resolution process. The court set a show cause filing deadline for the claimants.

Issue

Should stock claim 76D 30116353 and domestic claim 76D 30116354 be dismissed?

Findings of fact

1. On January 18, 2024, DNRC filed a Memorandum concerning Rehls' lack of participation and completion of the issue remark resolution process. DNRC made recommendations to resolve the issue remarks.

2. The Master reviewed the claim files and the January 18, 2024 DNRC Memorandum and issued an order for Rehls to show cause why stock claim 76D 30116353 and domestic claim 76D 30116354 should not be dismissed. Rehls failed to comply with the show cause filing deadline.

3. Stock claim 76D 30116353 and domestic claim 76D 30116354 should be dismissed.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right exempt use is prima facie proof of its content. Section 85-2-222(3), 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 claims 76D 30116353 and 76D 30116354

DNRC reported it reviewed the claim files and had an initial telephone conference with Rehls. Rehls did not contact DNRC or provide any additional evidence to DNRC after the initial telephone conference. DNRC recommended dismissal of stock claim 76D 30116353 and domestic claim 76D 30116354 because there was not enough information in the claim files, or any additional evidence provided by Rehls, to support the claims as

historical existing exempt claims.

Rehls were given the opportunity to respond to the suggested dismissal of stock claim 76D 30116353 and domestic claim 76D 30116354. Rehls' failure to provide any evidence to address or resolve the issue remarks left DNRC's review and the claim files as strong evidence that the claims should be dismissed.

DNRC's Memorandum may be viewed on the court's case management system, FullCourt Enterprise, at document sequence 2.00.

Conclusions of law

Based upon the issue remarks on claims 76D 30116353 and 76D 30116354, the lack of information in the claim files, and the DNRC's discussion and recommendation, the claims should be dismissed. Dismissal of the claims moots all issue remarks appearing on the claim abstracts.

Recommendations

Stock claim 76D 30116353 and domestic claim 76D 30116354 should be dismissed.

Post Decree Abstracts of Water Right Claim accompany this report to confirm dismissal of the claims in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Serena L Rehl
Robert S Rehl
217 E 2nd St
Libby MT 59923

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

Water Right Number: 76D 30116353 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: ROBERT S REHL
217 E 2ND ST
LIBBY, MT 59923

SERENA L REHL
217 E 2ND ST
LIBBY, MT 59923

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 76D 30116354 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: ROBERT S REHL
217 E 2ND ST
LIBBY, MT 59923

SERENA L REHL
217 E 2ND ST
LIBBY, MT 59923

Priority Date:

Type of Historical Right:

Purpose (Use): DOMESTIC

Flow Rate:

Volume:

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.