

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

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

CLAIMANTS: Merle P. Chott; John L. Chott

CASE 76D-0200-R-2022
76D 30126376

OBJECTOR: United States of America (USDA Forest Service)

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 United States of America (USDA Forest Service) filed an objection to all elements of stock claim 76D 30126376. On April 22, 2024, the United States of America (USDA Forest Service) unconditionally withdrew its objection.

Stock claim 76D 30126376 received the following issue remarks:

THIS CLAIM DOES NOT APPEAR TO MEET THE DEFINITION OF AN EXEMPT RIGHT UNDER SECTION 85-2-222(1), MCA.

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NESESE SEC 34 TWP 34N RGE 34W LINCOLN COUNTY.

WATER APPEARS TO BE CONVEYED FROM BEAR CREEK VIA WHITE DITCH.

THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF DIVERSION APPEARS TO BE A DITCH.

THIS CLAIM APPEARS TO BE A MULTIPLE USE OF THE SAME RIGHT AS 214531 & 214532.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 76D DECREE ISSUED 3/22/1984.

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.

The issue remarks appearing on stock claim 76D 30126376 put the validity of the claim at issue. Upon review, the claim failed to meet the definition of an exempt claim eligible for filing between 2013 and 2019. Merle P. Chott and John L. Chott (“Chotts”) were provided the opportunity to file evidence refuting this Master’s review of the record concerning stock claim 76D 30126376. On May 9, 2024, John L. Chott filed an email stating “...my wife and I realize this is not an exempt claim. We do not wish to defend this claim...” The email may be viewed on the court’s case management system, FullCourt Enterprise, at document sequence 17.00. Merle P. Chott did not sign the email. **If Merle P. Chott does not agree with the withdrawal of claim 76D 30126376, Merle P. Chott should file an objection to this Master’s Report.**

Issues

1. Is stock claim 76D 30126376 an exempt right pursuant to Section 85-2-222, MCA?
2. Should stock claim 76D 30126376 be dismissed from the adjudication?

Findings of fact

1. Stock claim 76D 30126376 does not meet the definition of an exempt right pursuant to Section 85-2-222, MCA.
2. Stock claim 76D 30126376 should be dismissed from the adjudication.

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. Prima facie proof may be 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. 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.

5. “‘Existing right’ or ‘existing water right’ means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973.” Section 85-2-102(13), MCA.

6. Exempt rights are existing rights for stock or domestic use of groundwater or instream flow. Section 85-2-222(1), MCA.

Analysis

Issues 1 and 2 – claim 76D 30126376 exempt claim status; dismissal of claim

In 2013 and 2017, the Montana Legislature amended § 85-2-222, MCA, and provided for the filing of exempt claims subject to specified terms and conditions. Exempt claims are existing rights for stock or domestic use of groundwater or instream flow. Section 85-2-222(1), MCA.

The DNRC claims examination noted that White Ditch (a diversion and conveyance system) appeared to be the primary point of diversion for stock claim 76D 30126376, and therefore the claim was not instream (direct from source). The record before the court confirms that stock claim 76D 30126376 historically diverted water using a ditch and thereby fails to meet the definition of an exempt claim.

Conclusions of law

Stock claim 76D 30126376 does not meet the definition of an exempt claim and should be dismissed from the adjudication.

Recommendations

Stock claim 76D 30126376 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

Merle P Chott
John L Chott
162 Curly Horse Ln
Troy MT 59935

Service via Electronic Mail

Maggie Woodward
Mark J. Widerschein
U.S. Dept of Justice, ENRD-NRS
P.O. Box 7611
Washington, D.C. 20044-7611
Phone: (202) 305-4224 (Woodward)
Phone: (202) 532-5803 (Widerschein)
maggie.woodward@usdoj.gov
Mark.widerschein@usdoj.gov
MontanaBasins.ENRD@usdoj.gov

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

Water Right Number: 76D 30126376 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: JOHN L CHOTT
162 CURLY HORSE LN
TROY, MT 59935

MERLE P CHOTT
162 CURLY HORSE LN
TROY, MT 59935

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: BEAR 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.