

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: P & S Contracting Inc.

CASE 76D-0565-R-2024

76D 109476-00

76D 109477-00

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

Commercial claim 76D 109476-00 appeared in the Preliminary Decree for this Basin with the following issue remarks:

THE WATER COURT FINDS THIS CLAIM TO BE DUPLICATED BY CERTIFICATE NO. 76D 042460-00, THEREFORE NO NEW WATER RIGHT CERTIFICATE WILL BE ISSUED.

THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED GW2 IS 11/22/1966.

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A FILED RIGHT.

Commercial claim 76D 109477-00 appeared in the Preliminary Decree for this Basin with the following issue remarks:

THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED GW2 IS 11/22/1966.

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A FILED RIGHT.

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.

On April 29, 2024, the DNRC filed a Memorandum recommending the withdrawal of claims 76D 109476-00 and 76D 109477-00. Enclosed with the DNRC Memorandum, in agreement with DNRC, were Requests to Withdraw Statements of Claim 76D 109476-00 and 76D 109477-00.

Issue

Should commercial claims 76D 109476-00 and 76D 109477-00 be dismissed?

Finding of fact

Commercial claims 76D 109476-00 and 76D 109477-00 should be dismissed.

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. 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. 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.

Analysis

The DNRC Database identifies P & S Contracting Inc. as the current claimant of water right claims 76D 109476-00 and 76D 109477-00. The Montana Cadastral Database located at <https://svc.mt.gov/msl/mtcadastral>, identifies P & S Contracting Inc. as the current property owner of the place of use identified by claims 76D 109476-00 and 76D 109477-00. Steven Wolleat, President and Paul Bache, Vice President of P & S Contracting Inc. agree commercial claims 76D 109476-00 and 76D 109477-00 should be withdrawn stating that claim 76D 109476-00 duplicates groundwater certificate 76D 42460-00 and claim 76D 109477-00 duplicates groundwater certificate 76D 42459-00.

Conclusion of law

The Requests to Withdraw Statements of Claim 76D 109476-00 and 76D 109477-00 are properly filed with the court.

Recommendation

Commercial claims 76D 109476-00 and 76D 109477-00 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

P & S Contracting Inc.
1250 Big Bend Rd
Libby MT 59923-9338

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

Water Right Number: 76D 109476-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: P & S CONTRACTING INC
1250 BIG BEND RD
LIBBY, MT 59923-9338

Priority Date:

Type of Historical Right:

Purpose (Use): COMMERCIAL

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 109477-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: P & S CONTRACTING INC
1250 BIG BEND RD
LIBBY, MT 59923-9338

Priority Date:

Type of Historical Right:

Purpose (Use): COMMERCIAL

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.