

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: Beverly A. McInnis; Michael J. McInnis

CASE 76D-0571-R-2024
76D 140754-00

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

Irrigation well claim 76D 140754-00 appeared in the Preliminary Decree with a priority date of May 3, 1977, and with the following issue remark:

IT APPEARS THIS WATER RIGHT MAY NOT HAVE BEEN PERFECTED. ACCORDING TO INFORMATION IN THE CLAIM FILE, THE WELL WAS NOT COMPLETED UNTIL 1977. ALL ELEMENTS OF THIS CLAIM MAY BE QUESTIONABLE.

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.

Pursuant to statute, the court reviewed the claim file in an attempt to resolve the issue remark appearing on irrigation claim 76D 140754-00. Based on that review it appeared the claim did not have a priority date *prior* to July 1, 1973, and therefore was not an existing right that should be included in the Water Court’s decree. The court provided the claimants, Beverly A. McInnis and Michael J. McInnis, an opportunity to refute its review of the record and file additional documentation supporting a priority date *prior* to July 1, 1973. Beverly A. McInnis and Michael J. McInnis filed additional documentation. Upon review, the additional documentation did not support a priority date *prior* to July 1, 1973. The court provided the claimants, Beverly A. McInnis and Michael J. McInnis, a second opportunity to refute its review of the record. Claimants did not file disagreement with the conclusion that the claim was not put to beneficial use *prior* to July 1, 1973.

Issue

Should irrigation claim 76D 140754-00 be dismissed?

Finding of fact

Irrigation claim 76D 140754-00 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. 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.

Analysis

Claimants Beverly A. McInnis and Michael J. McInnis did not file disagreement with the conclusion that the claim was not put to beneficial use *prior* to July 1, 1973. The second order providing claimants the opportunity to refute this conclusion included language that their lack of reply would lead to the conclusion that they agree irrigation claim 76D 140754-00 should be dismissed. Beverly A. McInnis and Michael J. McInnis did not reply to the second order.

Conclusion of law

Claimants Beverly A. McInnis and Michael J. McInnis agree irrigation claim 76D 140754-00 should not be included in the Water Court’s decree. Irrigation claim 76D 140754-00 should be dismissed.

Recommendation

Irrigation claim 76D 140754-00 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

Beverly A McInnis

Michael J McInnis

334 Reserve Rd

Libby MT 59923-8923

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

Water Right Number: 76D 140754-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: BEVERLY A MCINNIS
334 RESERVE RD
LIBBY, MT 59923-8923

MICHAEL J MCINNIS
334 RESERVE RD
LIBBY, MT 59923-8923

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

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.