

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: Ora N. Miller; Orpha T. Miller; Mary Etta
Miller; Lloyd O. Miller

CASE 76D-0572-R-2024
76D 5950-00

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

Domestic well claim 76D 5950-00 appeared in the Preliminary Decree 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 IN USE PRIOR TO JULY 1, 1973. 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 the issues raised by each issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence.

Pursuant to statute, the court reviewed the claim file in an attempt to resolve the issue remark appearing on domestic claim 76D 5950-00. 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, Ora N. Miller, Orpha T. Miller, Mary Etta Miller, and Lloyd O. Miller, an opportunity to refute its review of the record and file additional documentation supporting a priority date *prior* to July 1, 1973. On May 10, 2024, co-claimants Ora N. Miller, Orpha T. Miller, and Lloyd O. Miller filed a request to withdraw domestic claim 76D 5950-00 and a death certificate for co-claimant Mary Etta Miller.

Issue

Should domestic claim 76D 5950-00 be dismissed?

Finding of fact

Domestic claim 76D 5950-00 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

The DNRC Database identifies Ora N. Miller, Orpha T. Miller, Mary Etta Miller, and Lloyd O. Miller as the current claimants of water right claim 76D 5950-00. The Montana Cadastral Database located at <https://svc.mt.gov/msl/mtcadastral>, identifies Phillip Coblentz as the current property owner of the place of use identified by claim 76D 5950-00. If potential owner Phillip Coblentz disagrees that claim 76D 5950-00 should be withdrawn, Mr. Coblentz should file an objection to this Master’s Report.

Conclusion of law

The request to withdraw domestic claim 76D 5950-00 filed by Ora N. Miller, Orpha T. Miller, and Lloyd O. Miller should be granted.

Recommendation

Domestic claim 76D 5950-00 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

Ora N Miller
83 Meadowlark Ln
Libby MT 59923

Orpha T Miller
5215 Farm to Market Rd
Libby MT 59923

Service via USPS Mail

Mary Etta Miller
Lloyd O. Miller
870 Meadowlark Ln
Libby MT 59923

Potential Owner:

Phillip Coblentz
38 Jehovah Dr
Libby, MT 59923-4806

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

Water Right Number: 76D 5950-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners:

LLOYD O MILLER
870 MEADOWLARK LN
LIBBY, MT 59923

MARY ETTA MILLER
870 MEADOWLARK LN
LIBBY, MT 59923

ORA N MILLER
83 MEADOWLARK LN
LIBBY, MT 59923

ORPHA T MILLER
5215 FARM TO MARKET RD
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.