

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK DIVISION  
WESTSIDE SUBBASIN OF THE BITTERROOT RIVER BASIN (76HF)

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CLAIMANT: YC Properties LLC

OBJECTORS: Sharon Connolly; Bernard J. Spaan; Patrick  
O. Connell

**CASE 76HF-6002-P-2023**

76H 147812-00

76H 214439-00

**ORDER ON PENDING MOTIONS**

This order addresses (1) a motion for a preliminary injunction filed by objector Patrick O. Connell (“Connell”), and (2) a motion to dismiss objector Connell filed by claimant YC Properties LLC (“YC Properties”). Both motions arise out of YC Properties’ pending motion to amend water right claims 76H 147812-00 and 76H 214439-00.

**BACKGROUND**

YC Properties owns claims 76H 147812-00 and 76H 214439-00. The most current versions of the abstracts describe the claims as rights to use groundwater from wells for commercial use, specifically “beaver pens.” The points of diversion for the two wells are in Ravalli County in Subbasin 76HF, the Westside Subbasin of the Bitterroot River Basin. The abstracts identify YC Properties as the sole owner of both claims.

The Water Court issued a preliminary decree for subbasin 76HF on January 14, 1998. The preliminary decree included abstracts for the two claims. The Water Court has not yet issued a final decree for this subbasin.

On February 15, 2023, YC Properties moved to amend the two claims.<sup>1</sup> The motion asks the Court to modify the claims by adding a “historic groundwater pond” to the claims. The motion says the wells historically were used to supplement the “groundwater pond.” YC Properties included an affidavit of Robert Vining as evidentiary support for the motion.

After the Court received the motion, the Senior Water Master previously assigned to this case ordered YC Properties to publish notice of the motion under the provisions of § 85-2-233(6), MCA. YC Properties complied with the publication requirement. Several parties filed objections in response to the notice, including (1) Sharon Connolly (“Connolly”) (Doc. 5.00), (2) Bernard Jack Spaan (“Spaan”) (Doc. 6.00), and (3) Patrick O. Connell (“Connell”) (Doc. 8.00). The Senior Water Master put the case on a hearing track and issued a scheduling order on December 7, 2023. (Doc. 16.00).

On April 24, 2024, Connell filed a Request for Preliminary Injunction. (Doc. 29.00). The Request states it was filed by Timberland Forestry Services, LLC (“Timberland”), but Connell signed the Request. YC Properties responded opposing the Request. (Doc. 33.00). Connell, through Timberland, filed a reply (titled “Response to Claimant’s Objection to Objector’s Preliminary Injunction Request”). (Doc. 38.00).

On May 2, 2024, YC Properties moved to dismiss Connell’s objection based on lack of standing. (Docs 30.00 to 32.00). Connell opposes the motion, as do Connolly and Spaan.

## **DISCUSSION**

### *1. Connell’s Preliminary Injunction Request.*

Connell’s preliminary injunction requests asks the Court to issue an order “to prevent any and all uses of water from 76H 147812 00 and 76H 214439 00 and [the] pond.” The grounds for the motion are that the Court has not yet ruled on YC Properties’ motion to amend, nor has it ruled on Connell’s contention that the claims have been abandoned. YC Properties responds by arguing (1) that the Water Court lacks jurisdiction

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<sup>1</sup> The motion itself does not actually identify YC Properties as the moving party, but the Court presumes YC Properties is the filer because it is the sole owner of the two claims.

to issue a preliminary injunction, (2) even if it did have jurisdiction, Connell's Request does not meet the preliminary injunction factors set out in § 27-19-201, MCA, and (3) issuance of an injunction would not be equitable.

YC Properties' jurisdictional argument is sufficient to resolve the motion. As YC Properties notes, state district courts "retain *exclusive jurisdiction* to grant injunctive or other relief that is necessary and appropriate pending adjudication of the existing water rights certified to the water judge." Section 85-2-406(2)(b), MCA (emphasis added). Because this case involves the adjudication of YC Properties' water right claims, the district court has sole jurisdiction to determine whether to issue the particular injunction Connell seeks.

Connell argues the exclusive jurisdiction statute does not apply because water judges "have the same power as a district court judge." (Doc. 38.00, citing § 3-7-224(3), MCA). However, the statutory provision Connell cites is limited to matters within the jurisdiction of a water judge. Water judge jurisdiction is limited to "cases certified to the district court under 85-2-309, all matters relating to the determination of existing water rights within the boundaries of the state of Montana, and all petitions for judicial review filed with the water court under 2-4-702." Section 3-7-224(2), MCA. Under this statutory scheme, the authority to issue injunctions to curtail actual water use – which is what Connell seeks – is not part of the Water Court's adjudication authority.

As matters stand, the Montana Water Use Act authorizes YC Properties to use water within the scope of the elements of the claims as they currently exist because the claims previously have been included in a preliminary decree. Section 85-2-227, MCA. The Water Court has not yet endorsed the water use proposed in YC Properties' motion to the extent the use differs from what the Court previously decreed. However, if the Court grants the motion, it will amount to a determination of the rights as they existed as of July 1, 1973. Thus, even if the Water Court had the authority to issue the injunction Connell seeks, the merits of YC Properties' motion have not yet been addressed sufficiently to determine whether an injunction is proper under the provisions of Montana's injunction statute. Section 27-19-201, MCA.

2. *YC Properties' Motion to Dismiss.*

YC Properties asks the Court to dismiss Connell's objection on the basis that neither Connell nor Timberland owns a water right. YC Properties argues that because the notice provisions of the motion to amend statute are premised on adverse effects to "other water rights" standing to object to a motion to amend is narrower than standing to object to a Water Court decree.

YC Properties reads too much into the motion to amend statute. The statute sets a trigger for when notice is required, but its terms do not limit the scope of who may object to a motion. Instead, as the Supreme Court recognized in *Mont. Trout Unlimited v. Beaverhead Water Co.*, 2011 MT 151, ¶ 33, 361 Mont. 77, 255 P.3d 179, standing in Water Court adjudication proceedings is based on the "good cause shown" provisions of § 85-2-233(1)(a), MCA. Because the Supreme Court recognized "good cause" may be more than ownership of a water right, YC Properties' motion fails to cite the proper standard. Moreover, interpreting the standing test for objecting to a motion to amend more narrowly than the test for objecting to a decree could create an incentive for crafty claimants to try to block potential objectors by waiting until after a decree objection period to seek an amendment, rather than follow the usual approach of self-objecting during the objection period. Just as motions to amend are not intended to provide a mechanism to cure failure to file timely objections, they likewise are not a mechanism to effectively narrow the field of potential objectors. *See, In re Brewer Ranch LLC*, 2023 Mont. Water LEXIS 393, \*7.

YC Properties also argues Connell lacks standing to assert an abandonment objection because "only the DNRC can bring abandonment claims" after a water right has been finally decreed. (Doc. 30.00, at 8). YC Properties cites § 85-2-405, MCA as authority for this argument. This argument is incorrect. The Water Court has not issued a final decree for subbasin 76HF. Until it does, the Water Court has exclusive jurisdiction to address abandonment arguments raised with respect to existing rights. Sections 3-7-501(3) and 85-2-227(3), MCA. As a timely objector to YC Properties' motion to amend,

Connell has standing to raise an abandonment challenge and the Water Court has jurisdiction to hear it.

**ORDER**

Therefore, for the reasons stated, it is ORDERED, that Connell's Preliminary Injunction Motion and YC Properties Motion to Dismiss both are DENIED.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

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