

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: Brooke H. Harris; Michael J. Harris; Stateline
Casino & Bar LLC

CASE 76D-0570-R-2024
76D 140737-00

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

The above captioned irrigation claim appeared in the Preliminary Decree with the following issue remarks:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED NOTICE OF APPROPRIATION IS 12/31/1967.

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. Claimants were ordered to meet with DNRC to attempt resolution of the issue remark. Claimants participated in the issue remark resolution process but failed to complete the issue remark process. The court set a comment deadline for claimants.

Issue

Should irrigation claim 76D 140737-00 be dismissed?

Finding of fact

Irrigation claim 76D 140737-00 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. This prima facie proof may be contradicted and 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.

5. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. If a claimant fails to comply with an Order issued by the Court in its review of issue remarks, the Court may amend the claim to conform with information found in the claim file and information before the Court. Section 85-2-248(9)(a),(b), MCA.

Analysis

Issue – point of diversion issue remark resolution

Claimants were ordered to meet with DNRC to attempt resolution of the point of diversion issue remark. On May 6, 2024, DNRC filed its first Memorandum. DNRC reported:

- Michael J. Harris contacted DNRC and some information was exchanged.
- Stateline Casino & Bar LLC did not contact DNRC.

- A recommendation could not be made to resolve the point of diversion issue remark.

On May 9, 2024, the court issued an Order Setting Show Cause Filing Deadline for claimants to show cause why the claim should not be dismissed because the point of diversion could not be located.

On May 24, 2024, Kym Cooper, owner of Stateline Casino & Bar LLC, filed a request for an extension of time to work with DNRC to resolve the point of diversion issue. Ms. Cooper stated that her business “has been closed for a year and I hadn’t checked the mail so I received all correspondence after the dates it needed to be addressed.”

On May 30, 2024, the court vacated the show cause filing deadline, and extended the issue remark resolution deadlines setting a June 27, 2024 deadline for claimants to file documentation with the DNRC supporting resolution of the issue remark and a July 18, 2024 deadline for DNRC to file a Memorandum with the court concerning resolution of the point of diversion issue remark.

On July 10, 2024, DNRC filed a second Memorandum. DNRC reviewed a USGS National Hydrography Dataset, showing waterbodies and flowlines, and information filed by Ms. Cooper. DNRC also had several discussions with Ms. Cooper. DNRC reported:

- Discussions with Ms. Cooper resulted in the conclusion that she is not familiar with the water conveyance system and headgate, and the historic irrigation system has not been functional for many years.
- The claimed source, Lime Creek, flows west under Highway 2 through a culvert in Idaho.
- A wet area exists between Lime Creek and claimants’ properties, predominately in Idaho.
- The USGS National Hydrography Dataset indicates a channel flowing from the wet area into Lime Creek, and a channel flowing directly southwest to

the Kootenai River from the northernmost tip of the Stateline Casino & Bar LLC property.

The DNRC Memorandum stated the historic location for the point of diversion from Lime Creek is unknown, no recommendation could be made to resolve the point of diversion issue remark on the claim, and irrigation claim 76D 140737-00 should be dismissed. Claimants did not file written agreement with the DNRC's recommendation. An order issued for claimants to file a statement indicating whether they agreed with the DNRC's recommendation. The order included the following language: "...failure to comply with this filing deadline will be viewed as agreement that claim 76D 140737-00 should be dismissed" Claimants failed to comply with the comment filing deadline.

Conclusions of law

Based upon the claim file, DNRC's recommendations to dismiss claim 76D 140737-00, and claimants' failure to respond to court orders, claim 76D 140737-00 should be dismissed to resolve the issue remark questioning the point of diversion.

Recommendations

Irrigation claim 76D 140737-00 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

Brooke H Harris
Michael J Harris
327 Hwy 2
Troy MT 59935

Service via USPS Mail

Stateline Casino & Bar LLC
90 Hwy 2 N
Troy MT 59935

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

Water Right Number: 76D 140737-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: BROOKE H HARRIS
327 HWY 2
TROY, MT 59935

MICHAEL J HARRIS
327 HWY 2
TROY, MT 59935

STATELINE CASINO & BAR LLC
90 HWY 2 N
TROY, MT 59935

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: LIME 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.