

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE RIVER DIVISION  
YELLOWSTONE RIVER FROM BRIDGER CREEK TO THE  
CLARKS FORK OF THE YELLOWSTONE

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CLAIMANTS: Steven W. Krum; Valarie J. Krum

**CASE 43QJ-0001-R-2025**  
43QJ 30147477

**ORDER ON OBJECTION**

Steven W. Krum and Valarie J. Krum (“the Krums”) filed an objection in the Preliminary Decree for Basin 43QJ. This Order addresses the Krums’ objection and request for recognition of a pre-July 1, 1973 claim. For the reasons set forth below, the Water Court rejects the Krums’ request.

**BACKGROUND**

The Preliminary Decree for Basin 43QJ was issued on September 25, 2024. The deadline for water users to file objections to claims included in the Preliminary Decree was March 24, 2025. On March 14, 2025, the Krums filed a timely objection. The Krums’ objection pertains to groundwater certificate, 43QJ 30147477, which did not appear in the Preliminary Decree. The Krums’ objection stated their intent was to “Restore original groundwater well existing/exempt date back to June 15, 1973.” The Krums filed several exhibits with their objection including: excerpts of various laws and general information on water rights; a June 15, 1973 Notice of Completion; notice of the June 30, 2019 deadline to file an exempt claim; and email correspondence with the DNRC.

The Krums assert 43QJ 30147477 should reflect a June 15, 1973 priority date and be included in Water Court proceedings on the Basin 43QJ Preliminary Decree. The Krums believe they have a pre-July 1, 1973 “existing” right pursuant to Article IX,

Section 3 of the Montana Constitution and believe their claim should be reflected in the Preliminary Decree for Basin 43QJ.

43QJ 30147477 is based on a Notice of Completion of Groundwater Development the Krums filed with the Department of Natural Resources (“DNRC”) on December 5, 2019. Based on the 2019 filing, the Krums own a Groundwater Certificate with a December 5, 2019 priority date. The Krums believe their priority date should be “recognized and confirmed” as June 15, 1973. The Krums point to the Notice of Completion of Groundwater Appropriation by Means of a Well, filed by a predecessor on June 15, 1973, and various provisions of the Montana Constitution.

### **STATEMENT OF THE LAW**

Article IX, Section 3(1), of the Montana Constitution states, “All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.” The Montana Supreme Court has held that Article IX, Section 3(1) of the Montana Constitution does not mean that existing water rights are immune from regulation.

“These rights, like other property rights are protected against unreasonable state action; however they have not been granted indefeasible status. Furthermore, we conclude that consistent with Article IX, Section 3(1), of the Montana Constitution, the State Legislature may enact constitutionally sound regulations including the requirement for property owners to take affirmative actions to maintain their water rights.”

*Matter of Yellowstone River*, 253 Mont. 167, 174, 832 P.2d 1210, 1214 (1992).

As such, affirmative actions were enacted to protect pre-July 1, 1973 water rights. The 1973 Water Use Act “substantially revised” the system for claiming and protecting water rights. *In re Hurd*, 2022 MT 120, ¶ 6, 409 Mont. 79, 512 P.3d 256. Water users were required to file statements of claim with the DNRC for water put to beneficial use prior to July 1, 1973. Sections 85-2-221 - 224, MCA. The deadline for filing statements of claim with the DNRC was April 30, 1983. Section 85- 2-221(1) & (3), MCA. The deadline was extended to June 30, 1983, by Order of the Montana Supreme Court and as set forth in Section 85-2-212,

MCA. Thereafter, the Water Use Act was amended to allow late claim filings up to July 1, 1996. Section 85-2-221(3), MCA.

Groundwater or instream uses for stock or domestic purposes were exempt from filing. Section 85-2-222, MCA. However, any claim to pre-July 1, 1973 use of water, outside the exemptions, required a statement of claim filing. Sections 85-2-212 & 226. According to Section 85-2-226, MCA, failure to file a statement of claim “establishes a conclusive presumption of abandonment of that right.” Section 85-2-226, MCA; *Matter of Yellowstone River*, 253 Mont. 167, 175, 832 P.2d 1210, 1214 (1992).

In 2017, the Montana State Legislature provided a two-year period for water users to file on exempt claims. Section 85-2-222, MCA. Pursuant to the time frame set in 85-2-222, MCA, water users who chose to file previously unfilled exempt claims, were required to file by June 30, 2019. *Id.*

### **APPLICATION OF THE LAW**

A predecessor of the Krums filed a Notice of Completion of Groundwater Appropriation by Means of a Well (“Notice of Completion”), with the Yellowstone County Clerk and Recorder on June 15, 1973. A Notice of Completion is not a statement of claim. To receive recognition and confirmation of a pre-July 1, 1973 priority date, a statement of claim or exempt claim filing was required. *See* Sections 85-2-221, 222, & 226, MCA.

The Krums argue they did not receive sufficient notice of the requirement to file a statement of claim or exempt claim. The sufficiency of notice to water users has been addressed by the Montana Supreme Court. “All water claimants were provided more than ample notice and given expanded opportunity to file a claim. Section 85-2-226, MCA, makes clear that failure to file in a timely fashion establishes that the water right claimant has abandoned their right.” *Matter of Yellowstone River*, 253 Mont. 167, 175-180, 832 P.2d 1210, 1214-1218 (1992).

During the initial filing period that water users were required to file statements of claim – no later than June 30, 1983 – neither the Krums, nor their predecessors, filed a statement of claim. During the extended period set for the allowance of late claims – no

later than July 1, 1996 – the Krums did not file a late statement of claim. During the period set for filing on previously unfiled exempt claims – no later than June 30, 2019 – the Krums did not file an exempt claim.

Despite several opportunities to obtain recognition of a pre-July 1, 1973 claim, no filing was made as required by the Water Use Act. Therefore, any existing pre-July 1, 1973 right that could have been claimed by the Krums or a predecessor was deemed abandoned pursuant to Section 85-2-226, MCA; See also *Matter of Yellowstone River*, 253 Mont. 167, 175-180, 832 P.2d 1210, 1214-1218 (1992).

In *In re Hurd*, the Montana Supreme Court addressed a similar circumstance to this case. 2022 MT 120, 409 Mont. 79, 512 P.3d 256. The Hurds' predecessor obtained a 1963 Groundwater Certificate. ¶ 5. The Hurds' predecessor did not file a statement of claim. In 2006, the Hurds filed a Notice of Water Right with the DNRC, which allowed the Hurds to receive notice of relevant information from DNRC. ¶ 8. Although the Hurds received notice of the opportunity to file on previously unfiled exempt claims, the 2019 deadline passed and the Hurds did not file a statement of claim for their exempt water right. ¶ 9-10. In 2021, the Hurds filed a motion requesting to amend their Groundwater Certificate to a statement of claim. ¶ 11. By failing to file a statement of claim, the Hurds "lost their opportunity to invoke the Water Court's jurisdiction to adjudicate their priority as if they had filed one...The Water Court cannot ignore this law to enforce a priority date for the Hurds as if they had followed the claims procedure when they have not." ¶18. The Supreme Court upheld the Water Court's denial of the Hurds motion to amend the Groundwater Certificate to a statement of claim. ¶ 22.

Like the Hurds, the Krums and their predecessors failed to file a statement of claim and failed to file an exempt claim. Instead of filing a statement of claim or exempt claim, the Krums filed for and received a Groundwater Certificate. As in *In re Hurd*, the Water Court cannot ignore that the law requires a statement of claim filing for inclusion in adjudication proceedings and recognition of a pre-July 1, 1973 priority date.

Since no statement of claim was filed and no exempt claim filing was made, there is no basis to make 43QJ 30147477 reflect a pre-July 1, 1973 priority date or include it in

the adjudication proceedings. 43QJ 30147477 is a Groundwater Certificate with a December 5, 2019 priority date.

### **CONCLUSION**

Therefore, it is

ORDERED that the Krums' request to recognize a June 15, 1973 priority date for claim 43QJ 30147477 is DENIED.

ORDERED that the request for inclusion of 43QJ 30147477 in adjudication proceedings in the Preliminary Decree for Basin 43QJ is also DENIED.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

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