

**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MISSOURI RIVER ABOVE HOLTER DAM BASIN (41I)
PRELIMINARY DECREE**

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CLAIMANT: Montana Ditch Co.

OBJECTOR: Leonard H. Lambott

CASE 41I-0042-R-2023
41I 40259-00

ORDER ASSUMING CASE AND ORDER ON MOTION FOR SANCTIONS

On June 2, 2025, Objector Leonard H. Lambott filed a Motion for Sanctions pursuant to Rule 37 of the Montana Rules of Civil Procedure. The Motion has been fully briefed and the Court addresses the sanctions request as set forth in this Order.

BACKGROUND

Montana Ditch Co. (“MDC”) is the owner of claim 41I 40259-00, a claim for 3,718 acres of irrigation from the Missouri River. The claim has a 140 CFS flow rate, and a September 29, 1900 priority date. The claim was included in the Preliminary Decree for Basin 41I with issue remarks resulting from examination by the Department of Natural Resources and Conservation (“DNRC”). Leonard H. Lambott (“Lambott”) filed an objection to the claim.

This case was consolidated to resolve the issue remarks and objection. (Doc. 1.00). After a period of time for settlement, a Scheduling Order was issued. (Doc. 7.00). The scheduling order was amended on February 28, 2025 by request of Lambott to accommodate “serious technological issues” suffered by MDC’s counsel. (Doc. 9.00). According to the Foundational Affidavit of Diana J. Abbot in Support of Lambott’s Rule 37 Motion (Doc. 11.00), Lambott sent discovery to MDC via email on March 11, 2025.

MDC admittedly did not respond to discovery or send witness or exhibit lists pursuant to the Amended Scheduling Order. (Doc. 14.00). Lambott sent a meet and confer letter to MDC on May 2, 2025. (*See* Doc. 11.00). On June 2, 2025, Lambott filed a Combined Motion for Rule 37 Sanctions to Set Additional filing Deadline and Brief in Support (“Lambott’s Motion”). (Doc. 10.00). Lambott’s Motion requests the Court deem Requests for Admission in Lambott’s First Discovery Requests admitted and that the Court prohibit MDC from introducing any evidence other than what is in the DNRC database or enumerated in the Water Right Adjudication Rules. *Id.* Lambott’s Motion further requests the Court award attorney fees and costs to Lambott under Rule 37(d), Mont.R.Civ.P., and that a deadline be set for Lambott to file a dispositive motion in this case. *Id.*

ISSUE

Should the Water Court grant sanctions against MDC and, if so, what sanctions are appropriate?

DISCUSSION

Lambott’s Motion was filed under Rule 37(d) of the Montana Rules of Civil Procedure. Rule 37(d)(1)(A)(ii), Mont.R.Civ.P. allows a motion for sanctions in a pending action if a party “after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.” A motion is required to include a certification that there has been a good faith effort to confer with the party failing to act. Rule 37(d)(1)(B), M.R.Civ.P. There are various sanctions allowed pursuant to rule. The Rule also states, “instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless that failure was substantially justified or other circumstances make an award of expenses unjust.” Rule 37(d)(3), Mont.R.Civ.P.

Lambott served Lambott’s First Discovery Requests on MDC via email on March 11, 2025. (*See* Doc. 11.00). Lambott asserts that the discovery was also served via mail on March 14, 2025. (Doc. 14.00 at 5). After not receiving any responses to the discovery

requests, Lambott sent a meet and confer letter to MDC on May 2, 2025. (Doc. 10.00 at 3); *See* Rule 37(a), M.R.Civ.P.

MDC's counsel asserts it does not have any record of receiving the discovery requests via email or mail. (Docs. 12.00 & 13.00). It is acknowledged by both parties and in the Amended Scheduling Order that MDC's counsel had technological issues in February and March 2025. Counsel for MDC attests he first became aware of the discovery requests when he received the May 2, 2025 meet and confer letter. (*See* Doc. 15.00).

The parties disagree over the substance of correspondence between the meet and confer letter and Lambott's Motion. Apparently there had been settlement discussions and MDC's counsel indicates he believed a potential pending settlement made responses to discovery unnecessary. (Doc. 12.00 at 2). Lambott points out that regardless of settlement discussions, MDC still had an obligation to respond to discovery and otherwise comply with the Amended Scheduling Order. Additionally, Lambott asserts MDC never took any affirmative steps to further settlement, never sent any settlement proposal, and never requested a longer period of time to respond to discovery. (Doc. 10.00 at 6; Doc. 14.00 at 8).

Inattention and evasion by MDC's Counsel, either intentional or not, precipitated Lambott's request to deem all requests for admission admitted and conclusively established, prohibit MDC from introducing evidence, and require MDC to pay Lambott's expenses including attorney's fees incurred as a result of MDC's failure to respond. Lambott cites several cases to support its position that MDC's failure to respond to discovery is sanctionable under Rule 37(d), M.R.Civ.P. and warrants the sanctions requested, including attorneys fees. Of the cases cited, one, *Schuff v. A.T. Klemens & Son*, 2000 MT 357, 303 Mont. 274, 16 P.3d 1002, involves sanctions pursuant to Rule 37(d), M.R.Civ.P. The other cases cited involve sanctions under Rule 37(b), failure to comply with a court order.

In *Schuff*, sanctions were issued for the defendant's failure to disclose information in responses to discovery resulting in prejudice to the plaintiff. 2000 MT 357, ¶ 81 Information had been concealed for over 3 1/2 years from the date of service of the

interrogatories and sanctions were issued pursuant to Rule 37(d), M.R.Civ.P. *Id.* ¶¶ 3, 19. In reviewing the sanctions, the Montana Supreme Court set forth factors used in determining whether sanctions were properly imposed. Those factors are: (1) whether the consequences imposed by the sanctions relate to the extent and nature of the actual discovery abuse; (2) the extent of the prejudice to the opposing party which resulted from the discovery abuse; and (3) whether the court expressly warned the abusing party of the consequences. *Id.* ¶ 72.

Here, the consequences requested are harsh. If it is assumed that MDC's counsel did not know about the discovery requests until May 2, 2025 when counsel received the meet and confer letter, it has been approximately two months since that time. Thus, the extent of prejudice to Lambott, although not unremarkable, is not of the extent to warrant the sanctions requested. Further, there has been no prior warning by the Court and Lambott's Motion is the first the Court was aware of such nonresponsive behavior.

Although the other cases cited by Lambott involve the application of Rule 36(b), they are illustrative of facts and circumstances where sanctions were deemed appropriate. For example, in *McKenzie v. Scheeler*, the district court warned the plaintiff that sanctions may result if there was continued non-compliance with discovery and court orders. 285 Mont. 500, 508, 949 P.2d 1168, 1177 (1997). The district court also issued a specific order requiring the plaintiff to respond to the discovery. *Id.* at 512, 949 P.2d at 1175. After continued noncompliance, dismissal of the complaint was imposed as a sanction pursuant to Rule 37(b)(2), M.R.Civ.P. *Id.* In *Delaware v. K-Decorators, Inc.*, after the plaintiff failed to disclose information, the district court issued an order requiring the plaintiff to answer interrogatories within fifteen days of the order. 1999 MT 13, ¶ 85, 293 Mont. 97, 973 P.2d 818. The plaintiff was sanctioned under Rule 37(b)(2), M.R.Civ.P., when it failed to provide adequate responses pursuant to the deadline set in the court's order. *Id.* ¶ 96. In *Linn v. Whitaker*, the plaintiff failed to respond, provided "exceedingly incomplete and untimely responses. 2007 MT 46, ¶ 16, 336 Mont. 131, 152 P.3d 1282. The district court provided additional, "ample time" to respond but the plaintiff never produced the requested documentation. *Id.* ¶ 27. Thus, the district court issued sanctions under rule 36(b)(2), M.R.Civ.P. *Id.* ¶ 17.

In all of the cases, the district court put the non-responding party on notice of its duty to respond and warned further failure to comply could result in sanctions. Further, the factors in *Schuff*, also include an analysis of whether an express warning was issued by the court. Here, there has been no prior warning from this Court.

Lambott is understandably frustrated. The behavior of MDC's Counsel is not condoned. MDC has failed to respond to discovery, has not disclosed witnesses or exhibits, and has not sought any extensions. Lambott will be prejudiced if unidentified witnesses are sprung at the last minute without any opportunity to depose the witnesses. The same is true as to exhibits. If MDC plans to offer any evidence and exhibits, the information needs to be disclosed. If MDC fails to identify any witnesses or exhibits within the time constraints set forth in this order, MDC will be precluded from calling undisclosed witnesses or offering undisclosed exhibits at hearing. Additionally, requests for admission may be deemed admitted and other sanctions may be issued.

CONCLUSION

MDC should consider this Order an express warning. Any miscommunication between counsel should be clarified. Regardless of settlement discussions, responses to discovery are required. Although Sanctions will not be imposed at this time, if there is non-compliance with this order, sanctions may be issued in accordance with applicable rules.

Therefore, it is

ORDERED that MDC is given 15 days from the date of this order to provide a disclosure of any exhibits it intends to use at hearing in this case, the identity of any witnesses it intends to call at hearing in this case; and the answers and responses to the pending discovery requests.

ORDERED that Lambott's Motion for Sanctions is DENIED.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail

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