

**IN THE WATER COURT OF THE STATE OF MONTANA
 YELLOWSTONE DIVISION
 BIGHORN RIVER, BELOW GREYBULL RIVER (43P)**

	CASE 43P-0008-I-2024		
CLAIMANT: Scott Ranch LLC	43P 30116872	43P 30116889	43P 30116907
	43P 30116873	43P 30116890	43P 30116908
OBJECTORS: United States of America	43P 30116874	43P 30116891	43P 30116909
(Dept of Interior Bureau of	43P 30116875	43P 30116892	43P 30116910
Indian Affairs); Sunlight	43P 30116876	43P 30116893	43P 30116911
Ranch Co.	43P 30116877	43P 30116895	43P 30116912
	43P 30116878	43P 30116896	43P 30116913
	43P 30116879	43P 30116897	43P 30116914
	43P 30116880	43P 30116898	43P 30116915
	43P 30116881	43P 30116899	43P 30116916
	43P 30116882	43P 30116900	43P 30116917
	43P 30116883	43P 30116901	43P 30116918
	43P 30116884	43P 30116902	43P 30116919
	43P 30116885	43P 30116903	43P 30116920
	43P 30116886	43P 30116904	43P 30116921
	43P 30116887	43P 30116905	43P 30116922
	43P 30116888	43P 30116906	43P 30116923

ORDER ADOPTING MASTER’S REPORT

On May 13, 2025, a Master’s Report was issued in the above captioned case. (Doc. 13.00).¹ Claimant Scott Ranch, LLC (“Scott Ranch”) filed an objection to the Master’s Report (“the Objection”). (Doc. 14.00). The Objection specifically addressed the recommendation to dismiss claim 43P 30116875, one of the 51 claims in the case. (*Id.*) Scott Ranch did not object to the Master’s recommendations regarding the other 50 claims. (*Id.*) This Order addresses the Objection to the recommendation to dismiss claim 43P 30116875.

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

BACKGROUND

The claims in this case, including claim 43P 30116875, stem from a 2016 petition filed by Scott Ranch, ultimately appealed to the Montana Supreme Court in *Scott Ranch, LLC*. 2017 MT 230, 388 Mont. 509, 402 P.3d 1207. Thus, it is necessary to discuss the factual and procedural history to this point.

Scott Ranch acquired Indian allotment lands previously held in trust by the United States for a member of the Apsaalooke (Crow) Tribe. *Id.* ¶ 3. After the member of the Crow Tribe died, the United States issued fee patents and converted the lands to fee status in 2006. *Id.* Scott Ranch purchased the land in 2010 and 2012. *Id.*

In 2016, Scott Ranch filed a petition requesting the Water Court adjudicate its water rights. *Id.* at ¶ 4. Scott Ranch asserted ownership of 47 claims that were not available for adjudication until 2006 when the fee patents were issued. *Id.*

The Water Court denied Scott Ranch's 2016 petition and determined Scott Ranch's claims were part of the Tribal Water Right established in the Crow Water Rights Compact. ¶ 7. The Montana Supreme Court reversed the Water Court's determination and held Scott Ranch possessed *Walton* rights, recognized under state law and subject to adjudication proceedings. ¶¶ 17–18. A *Walton* right is a reserved water right of a Tribal allottee that has been transferred to a non-Indian purchaser. *Colville Confederated Tribes v. Walton*, 647 F.2d 42 (9th Cir. 1981) (“*Walton I*”); *Colville Confederated Tribes v. Walton*, 752 F.2d 397 (9th Cir. 1985) (“*Walton II*”). Non-Indian successors to Indian allotment lands acquire *Walton* rights – a right to share in reserved waters. *Walton I*, 647 F.2d at 50. *Walton* rights retain the same priority date as the tribal reserved right and are subject to filing requirements and adjudication proceedings pursuant to § 85-2-221(1), (4), MCA. *Id.* at 51.

Under the statewide adjudication proceedings, the claim filing deadline was July 1, 1996. *Scott Ranch*, ¶ 18. Most of Scott Ranch's asserted claims were exempt from the filing requirements of § 85-2-221(1), MCA. *Id.* ¶ 19. However, the Supreme Court determined Scott Ranch's non-exempt claims were subject to the July 1, 1996 claim filing deadline, which was prior to 2006 when Scott Ranch's land entered fee status. *Id.* ¶ 20 (citing § 85-2-221(1), (3), MCA).

“The circumstances surrounding Scott Ranch’s water rights claims present a somewhat unusual situation. The allotment lands that it acquired had been held in trust by the United States until 2006, when they were converted to fee status. At the time of the July 1, 1996 claims filing deadline, Scott Ranch’s claimed water rights had not yet been conveyed out of trust and were still part of the federally reserved Indian water right. Neither Scott Ranch nor its predecessors-in-interest could have timely filed claims for existing water rights by the general adjudication deadline.” *Id.* ¶ 22.

Based on the Montana Supreme Court’s ruling, Scott Ranch filed claims pursuant to HB 110, codified at § 85-2-222(1), MCA. Scott Ranch filed 51 exempt claim forms with the Department of Natural Resources and Conservation (“DNRC”). The filings were examined by the DNRC, issue remarks were added as a result of DNRC examination, and the claims were included the Interlocutory Decree for Bighorn River, Below Greybull River, Basin 43P, issued July 21, 2023. The United States of America, DOI Bureau of Indian Affairs (“BIA”) and Sunlight Ranch Co. filed objections to the claims. The Water Master consolidated Scott Ranch’s 51 claims in this case, 43P-0008-I-2024, to resolve the issue remarks and objections. (Doc. 1.00).

During case proceedings, Scott Ranch, BIA, and Sunlight Ranch Co. filed stipulations to resolve the objections. (Docs. 7.00, 10.00). After the stipulations were filed, the Water Master determined there was an unresolved issue remark on one of the claims in this case. (Doc. 11.00). The unresolved issue remark on claim 43P 30116875, questioned whether the claim was exempt.

The purpose of claim 43P 30116875 is Domestic. The source is Unnamed Tributary of Push Creek and the means of diversion is a pump. Water is conveyed through a pipeline to irrigate five acres. The claimed flow rate is 35 GPM and the volume is 10 Acre-Feet. *See* Claim File for 43P 30116875.² During DNRC examination of the claim, DNRC questioned the pump and noted perhaps the claim was intended to be filed as livestock direct from source. *Id.* As a result of the DNRC examination, the following issue remark was added:

² The claim file is available for public viewing at <https://gis.dnrc.mt.gov/apps/WRQS/>.

THIS CLAIM DOES NOT APPEAR TO MEET THE DEFINITION OF AN EXEMPT RIGHT UNDER SECTION 85-2-222(1), MCA.

The Water Master set a deadline for Scott Ranch to file additional information to resolve the issue remark. (Doc. 11.00). On March 11, 2025, Scott Ranch filed Claimant’s Submission of Facts and Legal Argument. (Doc. 12.00). Scott Ranch argued that claim 43P 30116875 should be recognized as a valid exempt claim because DNRC’s definition of “based upon instream flow” conflicts with the plain language of § 85-2-222(1), MCA, and because the claim was recognized under the Crow Compact. (*Id.* at 4–5).

The Water Master issued a Master’s Report with recommendations on all 51 claims. (Doc. 13.00). The Master’s Report concluded claim 43P 30116875 was a non-exempt claim that was not otherwise filed by the July 1, 1996 deadline and should therefore be dismissed. (*Id.* at 7–10). Scott Ranch filed an objection to the recommended dismissal of claim 43P 30116875 (“the Objection”). (Doc. 14.00). The Objection asserts the Master’s Report did not properly apply § 85-2-222(1), MCA, nor *Scott Ranch*. (*Id.* at 2, 6–7). Moreover, the Objection posits claim 43P 30116875 should be deemed a valid exempt claim. (*Id.* at 7).

ISSUE

Did the Master’s Report err in its recommendation to dismiss claim 43P 30116875?

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 allows for regulation of existing water rights.

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 the Adjudication of Water Rights in the Yellowstone River, 253 Mont. 167, 174, 832 P.2d 1210, 1214 (1992).

Affirmative actions were enacted to protect existing water rights. The 1973 Water Use Act “substantially revised” the system for claiming and protecting existing 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. Mont. Code Ann. §§ 85-2-221–224. The deadline for filing statements of claim with the DNRC was April 30, 1983. Mont. Code Ann. § 85-2-221(1) & (3). The deadline was extended to June 30, 1983, by Order of the Montana Supreme Court and as set forth in § 85-2-212, MCA. Thereafter, the Water Use Act was amended to allow late claim filings up to July 1, 1996. Mont. Code Ann. § 85-2-221(3). Failure to file a statement of claim “establishes a conclusive presumption of abandonment of that right.” Mont. Code Ann. § 85-2-226; *Matter of Yellowstone River*, 253 Mont. at 175, 832 P.2d at 1214.

The Montana Legislature expressed its intent to include existing federal “reserved Indian water rights” as part of the general adjudication in Montana. *Scott Ranch*, ¶ 14 (citing 1979 Mont. Laws ch. 697, § 27; Mont. Code Ann. § 85-2-701(1)). Under federal law, the creation of an Indian reservation impliedly reserves to the tribe water rights necessary to fulfill the purposes of the reservation, with the priority date as the date of the reservation’s creation. *Scott Ranch*, ¶ 15 (citing *Lewis v. Hanson*, 124 Mont. 492, 496, 227 P.2d 70, 72 (1951); *Winters v. United States*, 207 U.S. 564 (1908); *Walton* 1647 F.2d at 46). A tribe’s federally reserved water rights are “existing rights” prior to July 1, 1973. Mont. Code Ann. § 85-2-102(13).

In 2017, the Montana State Legislature passed HB 110, which provided a two-year period for water users to file on exempt claims. Mont. Code Ann. § 85-2-222 (2017). Pursuant to the time frame set in § 85-2-222(2)(a), MCA, a June 30, 2019 deadline was set for water users to file previously unfiled exempt claims. *Id.*

An interplay between tribal water rights and state-based rights occurs when water rights appurtenant to allotment land are transferred to a non-Indian. As previously defined in this Order, a *Walton* right shares reserved waters and retains the priority date of

the tribal reserved right. *Walton I*, 647 F.2d at 50. However, a *Walton* right is still subject to state filing requirements and adjudication proceedings pursuant to § 85-2-221(1), (4), MCA.

APPLICATION

Claim 43P 30116875 was filed on April 6, 2018, pursuant to the timeframe set for filing previously unfiled exempt claims. Mont. Code Ann. § 85-2-222(2)(a). The purpose was claimed as domestic use with five acres of irrigation. *See* Claim File for 43P 30116875. The means of diversion was claimed as a pump on an Unnamed Tributary of Push Creek and the priority date was claimed as “May 7, 1868 – Walton.” *Id.* Included with the claim filing is correspondence to DNRC from Scott Ranch’s attorney stating:

These water rights are the water rights that were the subject of Montana Water Court Case WC 2016-04, the final outcome of which was determined by the Montana Supreme Court in case DA 17-0031. These claims have been determined to be *Walton* water rights, recognized as State Rights under the Crow Water Compact, and should be filed under House Bill 110’s extension to the Exempt Claims process.

Id.

In the prior proceedings on the 2016 petition for adjudication, Scott Ranch acknowledged that some of its claims did not fall within the scope of § 85-2-222, MCA. *Scott Ranch*, ¶ 19. The issue remark added to claim 43P 30116875 indicates that in DNRC’s examination of Scott Ranch’s claims prior to the issuance of the Interlocutory Decree, DNRC questioned whether claim 43P 30116875 met the definition of an exempt claim under § 85-2-222(1), MCA. Based on claim examination documents, it appears that DNRC’s questions were raised based on the claim to pump water from the Unnamed Tributary of Push Creek. *See* Claim File for 43P 30116875. In this case, the Master’s Report concluded that 43P 30116875 was not exempt because the claim included a pump in the creek conveying water through a pipeline to the place of use, and thus, did not fall under § 85-2-222, MCA. (Doc. 13.00 at 8–10).

In *Scott Ranch*, the Montana Supreme Court encouraged Scott Ranch to file on its exempt claims. ¶ 23. However, the Montana Supreme Court also acknowledged that Scott Ranch’s non-exempt claims could not be filed based on a “jurisdictional gap.” *Id.*

at FN2. Scott Ranch's land entered fee status in 2006, however, the deadline for filing existing water rights was July 1, 1996. Mont. Code Ann. § 85-2-221(3). Moreover, there was no opportunity for Scott Ranch to file its non-exempt water rights.

1. Application of § 85-2-222(1), MCA.

The Objection asserts the Master's Report applied a definition of instream use that is too limited. (Doc. 14.00 at 2). According to the Objection, the plain language of § 85-2-222(1), MCA, supports claim 43P 30116875 and the DNRC criteria excluding man-made diversions does not comport with the statute. *Id.* Additionally, the Objection argues that the Water Court has accepted as exempt claims that include man-made diversions from a stream and that testimony during legislative hearing on HB 110 supports its position. *Id.*

A. Plain Language of § 85-2-222(1), MCA, and DNRC's Examination Criteria.

Section 85-2-222(1), MCA, states:

As used in this section, "exempt right" means those claims for existing rights for livestock and individual uses as opposed to municipal domestic uses based upon instream flow or ground water sources and claims for rights in the Powder River basin included in a declaration filed pursuant to the order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, or under sections 3 and 4 of Chapter 485, Laws of 1975. An exempt right is exempt from the filing requirements of 85-2-221(1).

When the DNRC examined claim 43P 30116875, it noted the claim did not appear to be an exempt claim pursuant to § 85-2-222(1), MCA, and added an issue remark to the claim. In its examination of claims prior to the Water Court's issuance of a decree, the DNRC uses a claim examination manual.³ The Master's Report for this case identified that the DNRC examination manual's definition of exempt claims does not include domestic or stock claims using man-made diversions from creeks. (Doc. 13.00 at 9). The DNRC examination manual's definition states:

³ DNRC's examination manual is publicly available at <https://dnrc.mt.gov/Water-Resources/Water-Rights/adjudication-pages/Adjudication-Documents-Forms>.

“Exempt Water Right” means an existing water right for which a statement of claim did not have to be filed pursuant to §85-2-222, MCA. This includes 1) domestic use based on instream use with no man-made diversion, 2) domestic use based on a groundwater source, 3) stockwater based on instream use with no man-made diversion, 4) stockwater use based on a groundwater source, 5) appropriations of groundwater put to use between January 1, 1962 and July 1, 1973 with a notice filed under the 1961 Ground Water Code.

See DNRC, *Claim Examination Manual* 36 (2013).

The Master’s Report used the examination manual to explain the issue remark placed on claim 43P 30116875. The Report also used the examination manual to conclude that using a pump for irrigation was not within the parameters of an exempt claim pursuant to the statute. (Doc. 13.00 at 7–10).

According to the Objection, since the statute says, “based upon instream flow,” all claims to diversions of water from a creek are exempt, so long as they are claimed for stock or domestic, because all diversions of water from a creek are ostensibly “based upon” water in a stream. (Doc. 14.00 at 3–4). Thus, Scott Ranch argues DNRC’s definition is incorrect and the Master’s Report’s reliance on the definition was improper.

Although the Master’s Report cited the DNRC definition of an exempt claim, the Master’s Report relied on the language of § 85-2-222, MCA, to conclude 43P 30116875 was not an exempt claim. (Doc. 13.00 at 9). The Master’s Report explained claim 43P 30116875 included a number of improvements such as a pump in the creek which pumped water through a pipeline. (*Id.* at 4). As such, the Master’s Report determined the claim was not within the scope of §85-2-222, MCA. (*Id.* at 9).

Extending the scope of exempt claims to include pumping water from a creek for irrigation, albeit a small amount of irrigation, frustrates the purpose of the adjudication and re-writes the historical definition. The purpose of the Water Use Act was to provide for administration, control, and regulation of water rights, and to establish a system of centralized records. *Hill v. Ellinghouse*, 2024 MT 158, ¶ 34, 417 Mont. 308, 553 P.3d 365. Water users were required to claim their rights or else the rights would be conclusively presumed abandoned. *Id.* (citing Mont. Code Ann. § 85-2-102(13)).

Important to the integrity of the adjudication process is finality in proceedings. *Lewis v.*

Etna Ditch Co., 2022 Mont. Water LEXIS 187,*3. Claims to groundwater and instream flows for domestic, stock and the public trust were typically not filed “because they did not involve surface water diversions via ditches.” *Hill*, ¶ 35.

The limited timeframe for filing exempt claims under § 85-2-222, MCA was not another way for allowing for filing on all diverted uses. Rather, § 85-2-222, MCA was limited in permitted filings to remedy the historical understanding that instream uses were not valid or did not need to be filed.

B. Inconsistency in Application.

Scott Ranch points to what it perceives as an inconsistency in the application of § 85-2-222(1), MCA, to instream livestock claims: “Livestock use of instream flow results in actual removal of water from a stream. When livestock drink from a stream, they consume the water and carry it away.” (Doc. 14.00 at 2). Ultimately, Scott Ranch argues that it is incorrect for DNRC to question pumping water from a creek for irrigation as an exempt claim based on instream flow, while failing to question stock drinking from a creek as an exempt claim based on instream flow.

Livestock drinking directly from a creek does not include a man-made diversion. Further, case law recognizes stock drinking directly from a creek as a use based on instream flow. *See, e.g. Hill*, ¶ 35. Case law has further categorized “instream” uses as non-diversionary. *See, e.g. In re Adjudication of the Existing Rights to the Use of All the Water*, 2002 MT 216, ¶ 25, 311 Mont. 327, 55 P.3d 396 (“*Bean Lake III*”). By contrast, case law has not recognized pumping for irrigation as based on instream flow.

For example, in *Hill*, the Court stated, “Historically, use rights to groundwater and instream flows for individual use, stock use, and the public trust were ordinarily not filed because they did not involve surface water diversions via ditches.” ¶ 35. In *Bean Lake III*, the Montana Supreme Court stated, “...the Montana Legislature recognized that pre-1973 claims for stock use and individual use *based upon instream flow* were valid. Such non-diversionary, instream claims were exempted from the mandatory filing requirement of Title 85, Chapter 2.” ¶ 25 (emphasis included). “Thus, instream/inlake appropriations of water for beneficial uses may be valid when the purpose (e.g., stock-watering, fish, wildlife and recreation) does not require a diversion.” *Bean Lake III*, ¶ 36.

Instream was qualified as non-diversionary again in *MT Trout Unlimited v. Beaverhead Water Co.*, “Under the Montana Constitution and the public trust doctrine, the public owns an instream, non-diversionary right to the recreational use of the State's navigable surface waters.” 2011 MT 151, ¶ 29, 361 Mont. 77, 255 P.3d 179.

Scott Ranch’s argument -- that since livestock direct from source claims are exempt claims based on instream flow, then claim 43P 30116875 should also be considered an exempt claim based on instream flow -- does not align with the language of the statute nor case law.

C. Water Court Cases.

According to Scott Ranch, in case 41K-0707-R-2024, the Water Court accepted an exempt claim based on instream flow that included a diversion. (Doc. 14.00 at 5.) However, this is a misreading of case 41K-0707-R-2024. Case 41K-0707-R-2024 included a claim owned by State of Montana Department of Fish, Wildlife and Parks (“FWP”) for stock drinking directly from a lake. The claim appeared in the Preliminary Decree for the Sun River, Basin 41K, with the same issue remark as at issue here, indicating the claim did not appear to meet the definition of an exempt right under § 85-2-221(1), MCA. To resolve the issue remark, the Water Master required further information “to determine the validity of this exempt claim.” *See Case 41K-0707-R-2024, Doc. 1.00.*

FWP’s instream flow specialist conducted a site visit and determined the source was a lake that occurred naturally in a low saddle between two drainages. The specialist concluded that although the lake had been modified to include a dam for a separate irrigation claim, the direct from source livestock claim did not rely on the diversion. *See Case 41K-0707-R-2024, Doc. 5.00.*

The Court confirmed the claim as a valid exempt claim for livestock direct from source and removed the issue remark. *See Case 41K-0707-R-2024, Master’s Report Doc. 6.00; Order Adopting, Doc. 7.00.* Although the outlet of the lake had a dam, used under a third party’s non-exempt irrigation claim, the claim in case 41K-0707-R-2024 was non-diversionary. Unlike here, the claim to divert water for irrigation was under an entirely different, non-exempt claim owned by another party.

Case 41K-0707-R-2024 does not support the Objection. Scott Ranch has not provided any instances in which the Water Court accepted claims to water diverted with pumps and conveyed for domestic irrigation as exempt claims under § 85-2-222(1), MCA.

D. HB 110 Legislative Hearing.

Scott Ranch asserts that statements made during the House Natural Resource Committee's January 23, 2017, hearing on HB 110 support its position that claim 43P 30116875 is exempt. (Doc. 14.00 at 4). According to Scott Ranch, the bill sponsor, Representative Brad Hamlett, made the following statement in response to a question about filing fees: "You file for every individual water right you had, whether it was a spring, or taking water from a river, or pumping it out of the ground, or storing it." (*Id.*) Scott Ranch emphasizes the phrase "taking water from a river" to assert HB 110 was intended to cover a wider range of claims, including claims for man-made diversions of water from a river or creek. (*Id.* at 4–5.)

Scott Ranch takes Representative Hamlett's statement out of context. The statement from the House Natural Resources Committee's January 23, 2017, hearing includes only a portion of Representative Hamlett's response. At the beginning of the hearing, Representative Hamlett explained that water users were required to file statements of claim with the DNRC for water put to beneficial use prior to July 1, 1973, and that failure to file a statement of claim meant abandonment of the right. Hamlett also explained that some rights were exempt from filing and that it was his understanding that water users were often encouraged not to file on exempt claims. (Mont. Legis., House Nat. Res. Comm. Jan. 23, 2017, 15:01-15:09).

During the hearing, Representative Flynn questioned, "Is the filing fee per claim or per group of claims?" In response to the question, Representative Hamlett stated:

I believe it's per claim. So, if you have a spring you haven't filed on, you're filing on that. If you have ten water sources that you use, and you haven't filed on, I believe you file ten claims. Because that's the way the adjudication always has been. You filed for every individual water right you had, whether it was a spring, or taking water from a river or pumping it out of the ground or storing it.

(*Id.* at 15:22–15:23.) In context, considering the entire response from Representative Hamlett, the statement addressed how claims were filed based on fees assessed and did not provide a definition of exempt claims. Further, Representative Hamlett’s reference to “taking water from a river” was an illustration of how claims were originally filed in the adjudication. It does not reflect a statement regarding the definition of exempt claims.

Therefore, the Legislative history cited by Scott Ranch does not support the Objection.

2. Application of *Scott Ranch*.

In *Scott Ranch*, the Montana Supreme Court acknowledged that the only opportunity for Scott Ranch to file claims was the re-opening of the exempt claim filing process pursuant to HB 110 and § 85-2-222(1), MCA. ¶ 23. “Apart from the recently enacted provisions for filing water rights claims prior to June 30, 2019,” there was no way for Scott Ranch or other similarly situated parties to file non-exempt *Walton* rights appurtenant to land converted to fee status after July 1, 1996. *Id.* By footnote, the Court stated the Legislature’s consideration may be warranted for “non-exempt *Walton* claims that were not separated from a federally reserved Indian water right until after July 1, 1996.” *Id.* FN2.

The Master’s Report in this case concluded there had been no legislative fix for filing on non-exempt *Walton* rights appurtenant to land converted to fee status after July 1, 1996. (Doc. 13.00 at 10). Scott Ranch states “the Master’s Report did not consider HB 110 as the fix....Unlike the facts in *Scott Ranch* w[h]ere the Claimant admitted two claims were non-exempt, Claimant is not making the same admission here.” (Doc. 14.00 at 6–7). Scott Ranch takes issue with the fact that the Master’s Report did not consider whether HB 110 was the legislative fix. (*Id.*) However, Scott Ranch does not offer any evidence that HB 110 was intended to be the legislative fix for non-exempt *Walton* rights. HB 110 was passed during the 2017 Legislative Session, which ended prior to the Montana Supreme Court’s August 2, 2017 decision in *Scott Ranch*. Thus, HB 110 could not have been intended to respond to the decision in *Scott Ranch*, which suggested a legislative fix may be necessary.

To the extent Scott Ranch aims to use Representative Hamlett's statement as evidence of such a fix, Representative Hamlett's statement is not evidence of an expanded definition of exempt claims, nor does it reference an intent to allow filing of non-exempt *Walton* rights. Citing *Scott Ranch* in a separate case, the Montana Supreme Court stated,

Regarding Scott Ranch's non-exempt rights, however, we held that the Water Court 'lacked jurisdiction to adjudicate Scott Ranch's claims because the 1996 deadline for filing these statements of claim had already passed. We noted that the law creating the deadline stated explicitly that DNRC 'and the district courts may not accept any statements of claim' after the deadline.

Hurd, ¶ 19 (internal citations omitted). The Court acknowledges that Scott Ranch is in a frustrating position in which there is no mechanism to claim its non-exempt *Walton* rights. Although the Court recognizes Scott Ranch's position, the Court cannot interpret the statute to mean something it was not intended to mean. Accepting Scott Ranch's definition of an exempt claim to include surface water claims with man-made diversions—such as pumps and ditches—would expand what was intended to be a narrow filing opportunity.

Even though claim 43P 30116875 is not for a particularly large amount of water, nor for an extensive amount of irrigation, expanding the scope of § 85-2-221, MCA, to include pumping out of a creek for irrigating even a small amount of acreage stretches the statute beyond what was intended and beyond what has historically been recognized as exempt in case law. Expanding the scope as requested by Scott Ranch would also create inconsistency in case proceedings. Accepting such claims would certainly thwart and prolong adjudication proceedings and further hinder the finality of adjudication proceedings.

ORDER

The Master's Report did not err in its recommendation to dismiss claim 43P 30116875. Therefore, it is

ORDERED that pursuant to Rule 53(e), M.R.Civ.P., the Water Court **ADOPTS** the Master's Report and its Recommendations and **APPROVES** the corrections to the claims

in the centralized record system that were reflected on each abstract served with the Master's Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

SERVICE VIA ELECTRONIC MAIL

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