

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
SUN RIVER BASIN (41K)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Shaw Butte Land Co., LLC

OBJECTOR: Shaw Butte Land Co., LLC

CASE 41K-0055-R-2023
41K 208425-00

ORDER GRANTING MOTION TO REINSTATE

BACKGROUND

The Water Court decreed claim 41K 208425-00 in the Preliminary Decree for the Sun River (Basin 41K) with the following issue remark:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT 00.00 ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

Shaw Butte Land Co., LLC (“Shaw Butte” or “Claimant”) owns claim 41K 208425-00. On July 20, 2021, Shaw Butte filed a self-objection to the claim. The objection asked the Court to modify the flow rate, volume, and place of use elements. The senior water master previously assigned to this basin consolidated the claim into case 41K-0055-R-2023 and set a filing deadline for Shaw Butte to provide additional

information regarding the place of use of the claim. (Doc¹ 1.00). Nothing was filed in response to the Order.

On October 26, 2023, the Court issued an Order Setting Show Cause Filing Deadline. The Order required Shaw Butte to file documentation and evidence resolving the issue remark appearing on claim 41K 208425-00. (Doc. 2.00). The Order stated that “[f]ailure to comply with this filing deadline will be viewed as agreement that the issue remark stating 0 acres are irrigated is correct and that the above-captioned claim should be dismissed.” (*Id.* at 1). Shaw Butte did not file anything in response to the Order.

On February 2, 2024, the Court issued a Notice of Filing of Master’s Report (“Master’s Report”) recommending that claim 41K 208425-00 be dismissed “for non-perfection/abandonment and for failure to comply with Orders of this Court.” (Doc. 3.00). The Master’s Report concluded claim 41K 208425-00 should be dismissed for failing to comply with the Court’s orders and for failing “to participate meaningfully in this case, despite being given opportunity to do so.” The Master’s Report was served on Shaw Butte via its counsel of record.

No objections were filed to the Master’s Report and on February 28, 2024, the Court adopted the Master’s Report and approved the dismissal of claim 41K 208425-00. (Doc. 4.00). The Court then closed case 41K-0055-R-2023.

On October 10, 2025, Shaw Butte filed a Motion to Reinstate Claim and Brief in Support (“Motion to Reinstate” or “Motion”). The Motion asks the Court to reinstate claim 41K 208425-00 to its pre-dismissal status. (Doc. 5.00).

ISSUE

Should the Court reinstate Water Court Case 41K-0055-R-2023?

DISCUSSION

A. Applicable Law

Shaw Butte moves the Court to reinstate a claim dismissed by the Water Court as a result of Shaw Butte’s failure to provide responses to Orders that required its participation. A party seeking reinstatement of a claim must follow five steps:

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

(1) the party must file a motion to reinstate, together with a supporting brief; (2) the party must provide notice to other persons who were parties to the proceeding involved the claim before it was dismissed; (3) the party must demonstrate they meet the criteria in Rules 55(c) and 60(b)(1) or (6), M.R.Civ.P; (4) the party must satisfy any Court-imposed conditions, such as payment of delinquent fees; and (5) all objections, counter objections, notices of intent to appear, or interventions are reinstated, as are any unresolved issue remarks.

In re Sunlight Ranch Co., Case 43O-0263-P-2019, 2022 Mont. Water LEXIS 930, *7–8 (citing *Downs v. United States (Bureau of Indian Affairs)*, 2021 Mont. Water LEXIS 1075, *4).

The first step is satisfied with the Motion to Reinstate. The second step does not require analysis as there were no other parties involved in this case prior to its dismissal. The third step is analogous to the evaluation of motions to set aside a default or a default judgment under Rule 55(c), M.R.Civ.P., and requires that Shaw Butte prove: (a) it proceeded with diligence; (b) its neglect is excusable; (c) a meritorious defense exists to the claim; and (d) if permitted to stand, the dismissal of the claim will result in injury to Shaw Butte. *Sunlight Ranch*, *8; *Downs*, *4. Additionally, Rule 60(b)(1), M.R.Civ.P., is applicable to the third step of the reinstatement evaluation, which provides that a court may “relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect.” The factors to satisfy the test for the third step will be analyzed before proceeding:

1. Diligence

The Water Court dismissed claim 41K 208425-00 in February of 2024. (Doc. 3.00). It was not until October of 2025 that Shaw Butte filed its Motion to Reinstate. (Doc. 5.00). However, Shaw Butte argues it satisfies the diligence factor of the reinstatement analysis because “[u]pon discovery of the dismissal, [claimant] acted immediately.” (*Id.* at 4). Despite the nearly two year-long delay, diligence is evaluated by determining whether the delay in seeking reinstatement of a claim was reasonable under the circumstances, rather than by a specific time frame. *Sunlight Ranch*, *8–9. However, the Court does not solely rely on the delay in filing a motion for reinstatement but also

evaluates how granting the reinstatement could impact the entire basin adjudication. (*Id.* at *9).

Here, Shaw Butte's delay in filing the Motion to Reinstate is reasonable considering the circumstances. Shaw Butte contends it had no way of learning of the dismissal of their claim because the attorney that Shaw Butte retained for the Basin 41K adjudication departed the firm, which de-activated the email address provided for the Court's service list. (Doc. 5.00, at 2). Due to the failure to provide a serviceable email address, Shaw Butte was not aware its claim had even been consolidated into Water Court Case 41K-0055-R-2023. (*Id.* at 1). Shaw Butte's counsel departed the firm in August of 2021 and the Water Court did not consolidate the case until August of 2023. (*Id.*; see Doc. 1.00). Therefore, there was no way for Shaw Butte to have notice the claim had entered the preliminary stages of adjudication. Shaw Butte acknowledges, and the Court agrees, that prior to the departure of the attorney, the service email should have been updated. It is not the duty of the Court, but rather that of the claimant and the claimant's counsel, to provide up-to-date, serviceable email addresses for correspondence with the Court. Because of the failure to provide an updated, serviceable email address, Shaw Butte's delay in filing their Motion for Reinstatement is reasonable.

Additionally, reinstating this case will not prejudice or unreasonably delay the adjudication of Basin 41K as it is currently in the objection and issue remark resolution stage.

2. Excusable Neglect

In order to establish excusable neglect, "justification for an error beyond mere carelessness or ignorance of the law" by the claimant or the claimant's attorney is required. *Downs*, at *10 (quoting *Frye v. Roseburg Forest Prods. Co.*, 2020 MT 10, ¶ 12, 398 Mont. 347, 456 P.3d 576). Here, Shaw Butte argues that its counsel's lack of providing an updated email address could be considered careless, but that it should be not punished for administrative errors as they were "actively prosecuting [their] claim" and building evidence to support their self-objection. (Doc. 5.00, at 4).

Shaw Butte's argument that its diligence in prosecuting their claim, by retaining a water resource specialist and conducting site work, should be sufficient to establish excusable neglect. Additionally, Shaw Butte urges that the Court should not punish them

for their former counsel's errors, pointing to former Water Court cases that acknowledge that, under specific circumstances, "the client should not be penalized for counsel's omissions." (Doc. 5.00, at 4). While there is no explicit case precedent in the Water Court supporting these contentions, in this case the Court concludes the oversight on the firm's behalf is excusable neglect for purposes of reinstating this case.

3. Meritorious Defense

A claimant is required to articulate what meritorious defense exists if a case is reinstated. *Downs*, at *14. Water Court precedent on granting motions to reinstate have revolved around the presence of other party's objections to the claims and whether claimants had a meritorious defense to those objections. *See Downs*, at *14–17; *Sunlight Ranch*, at *13–14. Shaw Butte contends that, pursuant to Rule 60(b)(1), a movant is not required to provide the case on the merits, but must allege a legally sufficient defense, which is supported by specific facts that make a showing that if those facts are later proven, the result could change. (Doc. 5.00, at 5).

Here, there are no objectors other than the Claimant, so neither *Downs* nor *Sunlight Ranch* are immediately applicable. Accompanying the Motion to Reinstate is evidence supporting the self-objection to the claim and rebutting the abandonment presumption. (*See* Doc. 5.00). This evidence accompanied Shaw Butte's original objection to claim 41K 208425-00. (*Id.*); *See* 41K 208425-00 Claim File, Notice of Objection & Request for Hearing, July 20, 2021.

The evidence accompanying the Motion to Reinstate, which was originally filed with the self-objection, is sufficient to establish a meritorious defense. The evidence proves that the defense to the dismissal of claim 41K 208425-00 is supported by facts that, if proven, could change the result of the dismissal.

4. Injury from Dismissal

Shaw Butte makes a sufficient showing specifying injury as a result of permitting the dismissal of claim 41K 208425-00 to stand. Shaw Butte contends its use, both historical and current, of irrigation and water-spreading invaluable to their agriculture operation. (Doc. 5.00, at 5–6). If Shaw Butte lost the use of their water as a result of permitting the dismissal of claim 41K 208425-00 to stand, it would suffer substantially. It is not in the Court's interest to inflict distress or cause loss of operation as a result of the

procedural aspects of basin adjudication. The Court concludes that Claimant's injury from the dismissal of the claim is significant.

Returning to the test for determining whether or not a dismissed claim may be reinstated, the Court concludes the analysis with the final two factors. The fourth step requires no further analysis as there are no delinquent fees due. Under the fifth step, Claimant's self-objection, as well as the issue remark appearing on claim 41K 208425-00, are also reinstated as the case was dismissed before either was resolved. Accordingly, the Court concludes that Shaw Butte meets the requisite burden for reinstating a claim.

ORDER

Therefore, it is

ORDERED that Claimant's Motion to Reinstate Claim 41K-0055-R-2023 is GRANTED.

ORDERED that a status conference to set further proceedings will be set in a separate order.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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