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FILED MAY 15, 2012

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
CLARK FORK RIVER BELOW THE FLATHEAD RIVER BASIN (76N)

CLAIMANT: Avista Corporation

OBJECTOR: Joel Jewett and Sandra Jewett; Roy O. Wills;

CASE 76N-52
76N 125799-00
76N 125800-00
76N 211889-00

ORDER DISMISSING JEWETT AND WILLS OBJECTIONS TO AVISTA CLAIMS

On March 20, 2012, Joel Jewett and Sandra Jewett filed a Notice of Objection and Request for Hearing involving Avista Corporation claim numbers 76N 125799-00, 76N 125800-00, and 76N 211889-00. The unsigned cover letter stated that the filings were late objections “to act as counter objections to Avista Corporation for the White Tail Ranch of Ovando’s water rights.” The unsigned letter also requested the Court to contact the objector or the objector’s “consultant, Water Rights, Inc (c/o Lee Yelin)” if the Court had any questions.

On March 26, 2012, Avista Corporation, through attorney R. Blair Strong, filed its Motion and Brief to Dismiss Objections of White Tail Ranch of Ovando LLC. On April 3, 2012, attorney John J. Ferguson filed his Notice of Appearance on behalf of Joel and Sandra Jewett and their Response to Avista’s Motion to Dismiss Late Objections. On April 13, 2012, Avista filed its Reply Brief to Jewetts’ Response.

On March 22, 2012, Roy O. Wills filed a Notice of Objection and Request for Hearing involving Avista Corporation claim numbers 76N 125799-00, 76N 125800-00, and 76N 211889-00. The unsigned cover letter stated that the filings were late objections

“to act as counter objections to Avista Corporation for Roy and Jason Will’s water rights.” The unsigned letter also requested the Court to contact the objector or the objector’s “consultant, Water Rights, Inc (c/o Lee Yelin)” if the Court had any questions.

On April 5, 2012, Avista filed its Motion and Brief to Dismiss Objections of Roy O. and Jason Wills. On April 17, 2012, attorney John J. Ferguson filed his Notice of Appearance on behalf of Roy O. and Jason Wills and their Response to Avista’s Motion to Dismiss Late Objections.

On April 10, 2012, the objections filed on or after March 1, 2012 to Avista Corporation claim numbers 76N 125799-00, 76N 125800-00, and 76N 211889-00 were consolidated into Water Court Case 76N-52.

Counterobjections

The Jewett and Wills cover letters stated that the objections to the Avista Corporation claims were “to act as counterobjections” to the objections filed by Avista Corporation. Avista Corporation filed objections to one or more of the Jewett and Wills claims located in the Blackfoot River drainage and included in the Blackfoot River Preliminary Decree (Basin 76F) issued by the Water Court on February 10, 2011. The opportunity to file counterobjections is provided by statute. They are to be filed within 60 days of a notice provided by the Water Court, but they are specifically “limited to those claims that are included within the particular decree issued by the Court.” Section 85-2-233(3), MCA.

In these circumstances, the specific decree is the Blackfoot River Basin 76F decree. The required Notice of the Opportunity to File Counterobjections was filed and mailed on March 1, 2012 and the 60-day deadline expired on April 30, 2012. Although the counterobjections were filed before the April 30, 2012 deadline, they are not directed at any Avista “claims that are included within the particular decree [Blackfoot River Decree] issued by the Court.” Instead, the counterobjections were filed to Avista claims which were included within the Lower Clark Fork Decree (Basin 76N) issued February

28, 1984. Consequently, the filing of counterobjections against the Avista claims which are not included in the Blackfoot River Decree is not authorized by statute. Therefore, the Jewett and Wills objections to the Avista claims cannot be considered as Basin 76F counterobjections.

Late Objections

Jewett and Wills primarily argue that their objections should be treated as late objections to the Avista claims, that proceedings on Avista's claims do not need to be reopened at this time to be heard, that the Court could place late objection remarks on the Avista claim abstracts, that these objections could be heard at the next decree stage, and that this procedure would be consistent with the Water Court's past practice for handling similarly filed late objections. *Wills Response to Avista's Motion To Dismiss* at 4 (April 17, 2012).

The past practice of the Water Court has been to do just what Jewett and Wills are proposing. However, until Avista's Motions to Dismiss were filed, the Court cannot recall any claimant objecting to the Court's practice of accepting late filed objections and adding a late filed objection remark to the claim abstract in anticipation that the late filed objection would be heard after the issuance of a second decree. After reviewing the briefs filed in this matter, it does not appear the Court's late objection practice is sound enough to withstand Avista's Motions to Dismiss.

The Basin 76N Temporary Preliminary Decree was issued in 1984 pursuant to 85-2-231(1)(d), MCA (1983). *See* the Hon. W. W. Lessley Basin 76N *Memorandum* at 9-10 (February 9, 1984). In the Notice of Entry of Temporary Preliminary Decree and Notice of Availability, Chief Water Judge Lessley directed that all objections be filed on or before June 4, 1984. By Order dated May 23, 1984, the objection deadline was extended to August 3, 1984. Any objections filed after August 3, 1984 failed to comply with Judge Lessley's order. A failure to comply with a lawful judicial order has consequences. In some circumstances, dates may be extended if a party presents a timely application and

provides a court with adequate explanation. *See, e.g.*, Rule 6(b), M.R.Civ.P.

Neither Jewett and Wills nor their predecessors in interest filed objections to the Avista claims by the August 3, 1984 Basin 76N extended objection deadline. They did not present an adequate explanation for failing to do so. Instead, they rely on § 85-2-233(1)(c), MCA, to support their late filing.

The fact that they failed to file timely Basin 76N objections in 1984 does not preclude them from filing objections when the 76N Preliminary Decree is issued in the future because a “person does not waive the right to object to a preliminary decree by failing to object to a temporary preliminary decree issued before March 28, 1997.” Section 85-2-233(1)(c), MCA. However, this same statute does not seem to contemplate the filing of objections prior to the issuance of a preliminary decree. The language of the statute contemplates the issuance of a preliminary decree and then authorizes objections to the preliminary decree if they fit within the statutory criteria.

A preliminary decree has not been issued in Basin 76N and it is not likely to be issued for a decade or more. The expectation expressed by the Montana Legislature is that the Water Court will issue initial decrees in every basin within the state by June 30, 2020. Section 85-2-270(2), MCA. The Water Court is currently on target to meet the Legislature’s initial decree issuance goal earlier than the 2020 deadline. The Court also hopes to reissue preliminary decrees in a few temporary preliminary basins prior to 2020. It is unlikely, however, that Basin 76N will be one of the temporary preliminary decree basins to be reissued prior to 2020.

The Jewett and Wills objections are either filed late or early. Even though the Water Court has accepted similar objections in the past and placed an issue remark on the targeted claim abstracts for a future decree, in this case Avista has filed motions to dismiss and asserts its water right claims should not be burdened for many years with such a cloud on its property rights. Under the circumstances here, the objections should be dismissed without prejudice. The objections may be properly filed when the

preliminary decree in Basin 76N is issued, likely sometime after 2020.

Finally, since the cover letters of White Tail Ranch of Ovando LLC (Joel and Sandra Jewett) and Roy O. Wills were all unsigned, all had very similar language, and all suggest the Court contact the objectors' "consultant, Water Rights, Inc (c/o Lee Yelin)," it appears that Lee Yelin is orchestrating a retaliatory filing of objections against Avista's water right claims by preparing and filing documents on behalf of his customers. Based on these limited observations, Mr. Yelin may be crossing the line into an area which is becoming close to the unauthorized practice of law, a practice he has been repeatedly warned against.

Conclusion

For the reasons expressed above, the objections to the captioned Avista Corporation claims filed by Roy O. Wills and by Joel and Sandra Jewett on their own behalf or on the behalf of the White Tail Ranch of Ovando LLC are **DISMISSED WITHOUT PREJUDICE**.

DATED this 15 day of May 2012.

/s/ C. Bruce Loble

C. Bruce Loble
Chief Water Judge

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