

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION ROSEBUD CREEK - BASIN 42A

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CLAIMANT: Rosebud Creek Ranch, LLC

**CASE 42A-95**  
42A 215856-00

OBJECTOR: Northern Cheyenne Tribe

**ORDER DISMISSING CLAIM AND CLOSING CASE**

STATEMENT OF THE CASE

Claim 42A 215856-00 was consolidated into case 42A-95 to address issue remarks and an objection from the Northern Cheyenne Tribe. Claim 42A 215856-00 is owned by Rosebud Creek Ranch, LLC. It was filed in 1996 as a late claim. The Northern Cheyenne Tribe argues that claim 42A 215856-00 is invalid under Section 85-2-221(3), MCA.

ISSUE

Is claim 42A 215856-00 invalid under Section 85-2-221(3), MCA?

ANALYSIS

Claim Filing Requirements

The filing deadline for existing rights in Montana’s general adjudication was April 30, 1982. Failure to file a claim by the deadline “established a conclusive presumption of abandonment of that right.” § 85-2-226, MCA. In 1993, the Montana Legislature amended Section 85-2-221, MCA “to provide for the remission of the forfeiture of existing rights to the use of water caused by the failure to comply with subsection (1).” § 85-2-221(3), MCA.

Section 85-2-221(3), MCA as amended provided that late claims could be filed on or before July 1, 1996. However, the benefits of this provision were limited to water rights in “a basin that has not been closed to further appropriation pursuant to a compact

ratified by the legislature under part 7 of this chapter prior to July 1, 1993.” § 85-2-221(3), MCA.

#### Northern Cheyenne-Montana Water Rights Compact

The Northern Cheyenne-Montana Water Rights Compact (the Compact) was ratified by the Legislature on May 20, 1991. The Compact states that the DNRC “shall order a moratorium on the issuance of permits in the Rosebud Creek basin concurrent with the ratification date of this Compact.” § 85-20-301, MCA, art. II.A.3.e. The DNRC issued a Moratorium Order on March 6, 1992, stating that the DNRC “shall not accept for processing any application for a permit to appropriate surface water or alluvial ground water in the Rosebud Creek basin....” The Tribe asserts that the moratorium on issuance of permits in the Rosebud Creek basin renders this basin closed to further appropriation.

The question is whether a moratorium on the issuance of permits results in “closed basin” or “basin closure” within the meaning of Section 85-2-221(3). In construing a statute, a judge is “to ascertain and declare what is in terms or in substance contained therein.” § 1-2-101, MCA. There is no requirement that a basin closure must be permanent to meet the requirements of Section 85-2-221(3), MCA. Basin 42A has been closed since March 6, 1992, a period of almost twenty-five years, and it will remain closed until the moratorium order is lifted. The closure was in effect when Section 85-2-221(3) was enacted, and it was in effect at the time of that statute’s July 1, 1996 filing deadline. Accordingly, the placement of a moratorium on the issuance of permits in Rosebud Creek basin amounts to a closure of the basin.

#### Claim 42A 215856-00

Claim 42A 215856-00 was filed on July 1, 1996 under the 1993 amendment to Section 85-2-221(3), MCA.

Because Rosebud Creek basin was closed pursuant to the Northern Cheyenne-Montana Water Rights Compact, claim 42A 215856-00 was therefore not protected by the late claim filing provisions of Section 85-2-221(3), MCA. Claim 42A 215856-00 was not filed by the April 30, 1982 deadline. Accordingly, it was forfeited pursuant to Section 85-2-226, MCA.

Rosebud Creek Ranch, LLC asserted that if claim 42A 215856-00 were not recognized as a valid right, it would amount to a taking of an asset. Rosebud Creek Ranch, LLC also argued that claim 42A 215856-00 was not a new claim, and therefore not subject to the Basin 42A Moratorium Order.

In *Matter of Yellowstone River*, 253 Mont. 167, 832 P.2d 1210 (1992), the Court held that the forfeiture statute (Section 85-2-226, MCA) does not constitute a taking because the appropriators of existing water rights could have protected their rights by complying with the filing requirement. *Matter of Yellowstone River*, 253 Mont. at 181, 832 P.2d at 1218 (“The act of filing on time is not an unreasonable nor onerous burden and it does not deprive appropriators of the right to use water. It is the failure to file on time, not the action of the State, that causes a property right to be extinguished.”). Accordingly, the forfeiture of claim 42A 215856-00 does not amount to a taking.

Rosebud Creek Ranch, LLC is correct that claim 42A 215856-00 is not a new claim and is therefore not subject to the moratorium on issuance of permits in Rosebud Creek basin. Claim 42A 215856-00 was, however, subject to the forfeiture statute. The claim was forfeited as a result of failure to comply with statutory filing requirements.

#### CONCLUSION

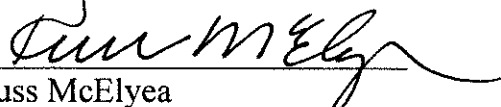
Claim 42A 215856-00 is not a valid claim because the right it represents was forfeited and was not eligible for remission. The Court takes no position on what should be done with the reservoir used in connection with claim 42A 215856-00.

#### ORDER

It is ORDERED that claim 42A 215856-00 is dismissed from the adjudication and shall not appear in the Final Decree for Basin 42A.

ORDERED case 42A-95 is CLOSED.

DATED this 18<sup>th</sup> day of November, 2016.

  
Russ McElyea  
Chief Water Judge

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
ROSEBUD CREEK  
BASIN 42A**

**IMPORTANT NOTICE**

**\*\*\*THIS WATER RIGHT CLAIM HAS BEEN DISMISSED\*\*\***

**AN ASTERISK (\*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.**

**Water Right Number:** 42A 215856-00 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** **DISMISSED**

**Late Claim:** B

**Owners:** ROSEBUD CREEK RANCH, LLC  
6010 BELL VALLEY RD  
CASPER, WY 82604 9255

**Priority Date:**

**Enforceable Priority Date:**

**Type of Historical Right:**

**Purpose (use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** UDEE CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT DURING ADJUDICATION OF THE 42A PRELIMINARY DECREE.