

IN THE WATER COURT OF THE STATE OF MONTANA
 CLARK FORK DIVISION
 CLARK FORK RIVER BASIN ABOVE THE BLACKFOOT RIVER (76G)
 * * * * *

IN THE MATTER OF THE ADJUDICATION OF)
 THE EXISTING RIGHTS TO THE USE OF ALL)
 THE WATER, BOTH SURFACE AND UNDERGROUND)
 WITHIN THE CLARK FORK RIVER DRAINAGE)
 AREA ABOVE THE BLACKFOOT RIVER,)
 INCLUDING ALL TRIBUTARIES OF THE)
 CLARK FORK RIVER ABOVE THE BLACKFOOT)
 RIVER IN DEER LODGE, GRANITE, LEWIS)
 AND CLARK, MISSOULA, POWELL AND)
 SILVERBOW COUNTIES, MONTANA.)

76G-W-092060-00

FILED

SEP 28 1990

Montana Water Court

CLAIMANT: Donald B. and J. Dene Wimberley
 ON MOTION OF MONTANA WATER COURT

OBJECTOR: Donald B. and J. Dene Wimberley

MASTER'S REPORT

FINDINGS OF FACT

1. Water right claim 76G-W-092060-00 was filed by Donald B. and J. Dene Wimberley for domestic purposes.
2. Donald B. and J. Dene Wimberley filed an objection to this claim concerning priority date. The Wimberleys also filed a Notice of Intent to Appear for this claim.
3. This claim was brought in on Motion of the Water Court concerning use prior to July 1, 1973.
4. On May 10, 1990, Leland Gilman filed an Affidavit on behalf of this claim which states that the well in question was drilled in 1958 or 1959 by O'Keefe Drilling of Butte, Montana. The Affidavit also states that this well has been used for domestic purposes since 1958 or 1959.

5. After review of the facts, the Master finds that the information contained in the Affidavit appears to be true and correct. The Affidavit is accepted by the Court.

6. Section 89-2912 R.C.M. states as follows:

"The application of groundwater to a beneficial use prior to January 1, 1962, is hereby recognized as a water right."

Section 89-2912 R.C.M.(1961)(repealed 1973).

7. Section 89-2913(h) R.C.M. states that persons who put groundwater to beneficial use prior to January 1, 1962 were to file with the County Clerk and Recorder a "Declaration of Vested Groundwater Rights." Such filing was to be done by January 1, 1964. Section 89-2913(h) R.C.M. (1961) (repealed 1973).

8. 89-2913(h) R.C.M. further states:

"Failure to comply with this requirement (filing) shall in no wise work a forfeiture of such rights...but he must maintain the burden of proving such unrecorded rights."

Section 89-2912 (h) R.C.M.(1961)(repealed 1973).

9. There is no evidence before the Court that any filing of a Notice of Appropriation, Notice of Completion or Declaration of Vested Groundwater Rights have ever been filed in association with this well.

10. This is a direct flow claim.

CONCLUSIONS OF LAW

I

The Water Court has jurisdiction to review all objections to temporary preliminary decrees pursuant to Mont. Code Ann. sec. 85-2-233.

II

The Water Court has jurisdiction over all matters relating to the determination of existing water rights and may consider a matter within the Court's jurisdiction on its own motion. Mont. Code Ann. Sec. 3-7-224.

III

Based on the Affidavit of Leland Gilman filed with this Court, the claimants have maintained their burden of proof as to application of this groundwater well to beneficial use prior to January 1, 1962. Pursuant to 89-2912, 2913(h) R.C.M. (1961) (repealed 1973), the Court concludes that this claim was put to beneficial use prior to January 1, 1962.

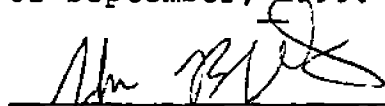
IV

The priority date for this claim shall be December 31, 1959.

VI

The volume quantification for this direct flow claim shall be removed as specified in Mont. Code Ann. Sec. 85-2-234(6)(b).

DATED this 27th day of September, 1990.



John Bloomquist
Water Master

CERTIFICATE OF SERVICE

I, Janet Lackey, Deputy Clerk of Court, Montana State Water Court, hereby certify that a true and correct copy of the above MASTER'S REPORT, FINDINGS OF FACT, CONCLUSIONS OF LAW, was duly served upon the following persons listed herein, by depositing the same, postage prepaid, in the United States mail.

Donald B. and J. Dene Wimberley
Box 85
Garrison, MT 59731

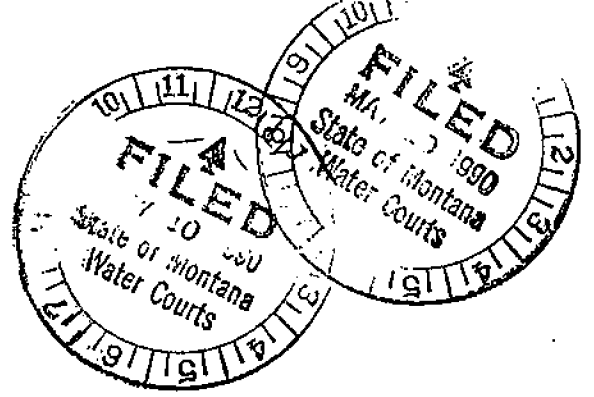
James J. Masar, Attorney
P. O. Box 8957
Missoula, MT 59807-8957

DATED this 28 day of September 1990.



Janet Lackey
Deputy Clerk of Court

AFFIDAVIT



STATE OF MONTANA)
 : ss
COUNTY OF POWELL)

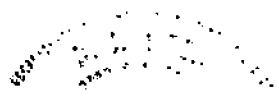
COMES NOW, LELAND GILMAN, being first duly sworn upon his oath, deposes and says:

That he is a resident of Powell County, Montana. Affiant is personally familiar with the water well which is owned by Donald B. and J. Dene Wimberley, which is located on their property in the Northwest Quarter of the Northeast Quarter of the Northwest Quarter of Section 15, Township 9 North, Range 10 West, P.M.M. Said well was drilled in 1958 or 1959 by O'Keefe Drilling of Butte, Montana. The well is approximately 35 to 40 feet deep, and has a four inch casing and produces approximately 20 gallons per minute. The well has been used for domestic purposes since it was drilled in 1958 or 1959.

Leland Gilman

LELAND GILMAN

Subscribed and sworn to before me this 27TH day of
APRIL, 1990.



K. Wood

Notary Public for the State of Montana
Residing at GARRISON, MONTANA