

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, INCLUD-)
 ING ALL TRIBUTARIES OF THE CLARK FORK)
 RIVER ABOVE THE BLACKFOOT RIVER IN DEER)
 LODGE, GRANITE, LEWIS AND CLARK,)
 MISSOULA, POWELL AND SILVER BOW)
 COUNTIES, MONTANA.)

CASE NO. 76G-351
 76G-W-107963-00
 76G-W-108715-00

FILED

JUL 17 1992

Montana Water Court

CLAIMANT: Viking Exploration, Inc., William & Thomas Tiefenthaler,
 Bearmouth Land and Cattle Company (former owner)
 David Sauerbier and Gene Tripp, Jr. (present owners)

OBJECTOR: Montana Department of Fish, Wildlife and Parks

ORDER DISMISSING CLAIM 76G-107963-00

A Prehearing Conference for the above claims in Case 76G-351 was held before Chief Water Judge C. Bruce Loble on July 16, 1992 at 10:00 AM by telephone conference call conducted through the Montana Water Court, Bozeman, Montana.

George Silvola and Charles Einarsen appeared on behalf of Viking Exploration, Inc., claimant. David Sauerbier, claimant, appeared on his own behalf. Ralph Ward appeared on a Notice of Intent to Appear. Terry McDonald, attorney, appeared on behalf of Roy Handley, successor-in-interest to Flansburg Ranch Co. on a Notice of Intent to Appear. G. Steven Brown, Attorney appeared on behalf of Montana Department of Fish, Wildlife & Parks, objector.

This Order refers only to Claim 76G-W-107963 in Case 76G-351.

R. George Silvola, a Colorado attorney for Viking

Exploration, Inc. (Viking), advised the Court that Viking had no present interest in the water right identified as Claim No. 76G-W-107963-00, that Helena Silver Mines, Inc. was the real party in interest, that Viking had returned the mill property and water rights to Helena Silver Mines, that the water right was appurtenant to that property, and that if Helena Silver Mines, Inc. did not desire to pursue this matter to protect its water rights that Viking did not wish to do so. Mr. Silvola advised that any action by the Court made no difference to Viking and that Viking could be dismissed from this action. Charles Einarsen, President of Viking and the signatory of the originally filed statement of claim, agreed with Mr. Silvola.

Terry McDonald, attorney for Roy Handley, moved to dismiss Claim No. 76G-W-107963-00. No objection to the motion was made by Viking. The Court grants the motion.

FINDINGS OF FACT

1. Viking Exploration, Inc. filed Claim 76G-W-107963-00 for mining purposes.
2. The Montana Department of Fish, Wildlife and Parks objected to the priority date, volume, flow rate, period of use, abandonment and presumption of non-consumptive use.
3. Ralph S. Ward filed two Notices of Intent to Appear.
4. Flansburg Ranch Co. filed a Notice of Intent to Appear.
5. Flansburg Ranch Co. filed a late objection and

objected to ownership, priority date, volume, flow rate and all other aspects of the claim.

6. Roy Handley succeeded to the interest of Flansburg Ranch Co. and Terry M. McDonald, Attorney, appeared on behalf of Roy Handley. See Court Minutes dated March 29, 1991.

7. During the First Scheduling Conference held on January 7, 1992, the Court was advised by Viking representatives that Viking would file a Water Right Transfer Certificate to evidence the transfer of Claim 76G-W-107963-00 to Helena Silver Mines, Inc. While Viking and Helena Silver Mines attempted to resolve the transfer problem, the Court advised that courtesy copies of orders would be served on Helena Silver Mines, Inc. and Luther E. Eggertsen, a Colorado attorney that Viking indicated as representing Helena Silver Mines, Inc. See Court Minutes dated January 9, 1992.

8. From and after the January 9, 1992 Court Minutes and to and including an April 3, 1992 Order of the Court, Helena Silver Mines, Inc. and Luther Eggertsen were provided with notice of these proceedings and courtesy copies of orders from this Court regarding this matter.

9. By letter dated February 24, 1992 and received by the Court on February 28, 1992, Peter W. Laczay, President of Helena Silver Mines, Inc. requested information from the Court.

10. On March 24, 1992, pursuant to a telephone request of Luther E. Eggertsen, the Court provided Mr. Eggertsen and Helena Silver Mines, Inc. with 73 copies of documents regarding Claim No.

76G-W-107963 and the objections thereto. The Court advised Mr. Eggertsen and Helena Silver Mines, Inc. in its March 24, 1992 letter of transmittal that since Mr. Eggertsen had indicated that he would pursue the filing of a Water Right Transfer Certificate with the Department of Natural Resources and Conservation, that the Court would keep Luther E. Eggertsen and Helena Silver Mines, Inc. on the service list for a while longer.

11. On March 25, 1992 the Court responded by letter to the February 24, 1992 letter of Peter Laczay, President of Helena Silver Mines, Inc.

12. On March 25, 1992 a Second Status Conference was held. Helena Silver Mines, Inc. had previously advised the Court that it did not want to participate. (See the Court's March 24, 1992 letter to Luther E. Eggertsen). Discovery, Prehearing and Hearing dates were set and all parties, including Helena Silver Mines, Inc. and Luther E. Eggertsen, were served with an Order to that effect on March 25, 1992.

13. On April 3, 1992 Helena Silver Mines, Inc. was served with an Order advising that if it intended to participate further in these proceedings that it needed to seek intervention pursuant to Rule 24 M.R.Civ.P. and that it needed to be represented by an attorney licensed to practice law in Montana. It was further advised in this Order that if the Court did not receive a Notice of Appearance of a Montana attorney representing Helena Silver Mines, Inc. by May 1, 1992, that Helena Silver Mines, Inc. would receive no further notice of the proceedings.

14. No Notice of Appearance has been filed on behalf of Helena Silver Mines, Inc. to date.

15. Helena Silver Mines, Inc. has had ample opportunity to intervene in this proceeding and has knowingly declined to do so.

CONCLUSIONS OF LAW

I.

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

II.

If Viking transferred this water right claim to Helena Silver Mines, Inc., then Viking, as transferor, was responsible for filing a Water Right Transfer Certificate within sixty days of the recording of a deed or other instrument evidencing a transfer of real property. See §85-2-424 and §85-2-431 MCA.

III.

Since no Water Right Transfer Certificate has been received by this Court, Viking Exploration, Inc. is the prima facie owner of this right. See §85-2-227 MCA.

IV.

The representations of Viking's representatives at the July 16, 1992 Prehearing Conference constitute a withdrawal of this claim.

V.

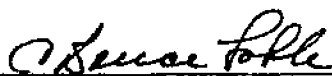
The motion of attorney Terry McDonald to dismiss Claim

No. 76G-W-107963-00 made without opposition by Viking is GRANTED.

VI.

As claim 76G-W-107963-00 has been dismissed it should not appear in the Preliminary or Final Decree of the Clark Fork River Basin Above the Blackfoot River (76G).

DATED this 17th day of July, 1992.


C. Bruce Loble
Chief Water Judge

CERTIFICATE OF SERVICE

I, Lori M. Burnham, Clerk of Court of the Montana Water Court, hereby certify that a true and correct copy of the above ORDER, FINDINGS OF FACT AND CONCLUSIONS OF LAW was duly served upon the persons listed below by depositing the same, postage prepaid, in the United States mail.

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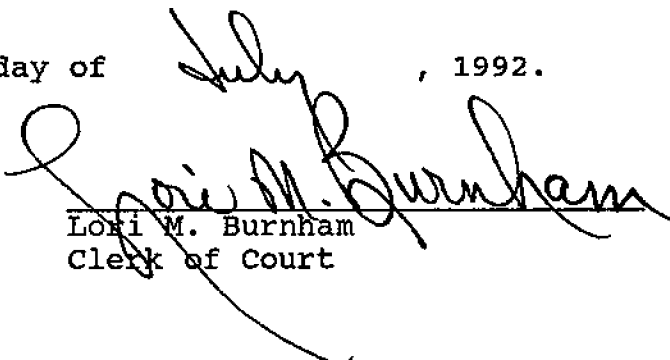
Ralph S. Ward
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Peter Laczay
P. O. Box 488
Couer d'Alene, ID 83814

Luther E. Eggertsen, Attorney
P. O. Box 687
Englewood, CO 80151

DATED this 17 day of July, 1992.


Lori M. Burnham
Clerk of Court