

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
FLINT CREEK BASIN (76GJ)

* * * * *

IN THE MATTER OF THE ADJUDICATION OF) Case No. 76GJ-55
THE EXISTING RIGHTS TO THE USE OF ALL)
THE WATER, BOTH SURFACE AND UNDERGROUND,) 76GJ-W-099221-00
WITHIN THE FLINT CREEK DRAINAGE AREA)
INCLUDING ALL TRIBUTARIES OF THE FLINT)
CREEK IN GRANITE AND DEER LODGE)
COUNTIES, MONTANA)

FILED

CLAIMANT: Clifford G. and May M. Nelson

FEB 12 1992

OBJECTOR: Blaine S. Bradshaw, Wm R. Ohrmann

Montana Water Court

ORDER

On September 6, 1989 the Order Setting Hearing For September 25, 1989 was entered and mailed to the claimants Clifford Nelson and May Nelson. This Order specifies that costs may be awarded for failure to appear.


On September 25, 1989 at 11:00 am, the time set for the hearing, the claimants Clifford Nelson and May Nelson did not appear. The objector Wm R. Ohrmann appeared, presented evidence and testimony, and made a Motion for Default for failure of the claimants to appear. The Order Setting Show Cause Hearing was entered and mailed to the parties on September 27, 1989. On September 26, 1989 a Withdrawal of Claim was filed by Clifford Nelson and May Nelson, and an Order Vacating Show Cause Hearing was entered and mailed to the parties on October 3, 1989. On January 23, 1990 the Master's Report was entered. On February 15, 1990 the Order Adopting Master's Report was entered by Chief Water Judge W. W. Lessley.

On September 27, 1989 Wm R. Ohrmann sent a letter to the

Court requesting an award of costs for his time and travel to the September 25, 1989 hearing. The statutes which govern claiming costs (§ 25-10-501 through 25-10-504 Mont. Code Ann.) state that the Bill of Costs must be filed within 5 days of the notice of the decision of the court. It is clear from case law that the bill of costs is not to be filed until a final decision is made by the court. *Karell v. American Cancer Society, Montana Division*, 239 Mont. 168, 779 P.2d 506 (1989). Neither the Master's Report nor the Order Adopting Master's Report are a final determination of this right. They are interlocutory pending entry of the Final Decree. The time for filing a bill of costs will not begin until entry of the Final Decree. The merits of the Ohrmann request need not be considered any further, and it is

ORDERED that the Ohrmann request for costs is DISMISSED WITHOUT PREJUDICE as it is untimely.

DATED this 12 day of February, 1992.



Kathryn L. W. Lambert
Water Master

Clifford G. & May M. Nelson
Star Route 35
Drummond, MT 59832

William R. Ohrmann
Star Route 35
Drummond, MT 59858

J. Allen Bradshaw, Attorney
P. O. Box 490
Philipsburg, MT 59858