

IN THE WATER COURT OF THE STATE OF MONTANA

\* \* \* \* \*

**FILED**

NOTICE OF FILING OF MASTER'S REPORT

DEC - 7 1993

TO: ALL PARTIES

**Montana Water Court**

RE: Case 41G-138, Claim 41G-W-182143-00, 41G-W-182144-00

This is to provide you with Notice that the Water Master has filed a Master's Report, Memorandum and Recommendations with the Clerk of the Water Court for the water right(s) listed above. A copy of the Master's Report is enclosed with this Notice.

Please review this Master's Report carefully. If there are any corrections or changes that need to be made, you have 10 days from service of this Notice to file a written objection. You must mail a copy of your written objection to all the other parties who have been involved in this proceeding and file a certificate of such mailing with the Water Court. (This procedure is required by Rule 1.II. Water Right Claims Examination Rules and by Rules 5 and 53 of the Montana Rules of Civil Procedure.)

DATED this 7th day of December 1993.

LORI M. BURNHAM  
Clerk of Court  
Montana Water Court  
P. O. Box 879  
Bozeman, MT 59771-0879  
(406) 586-4364  
1-800-624-3270 (in Montana)

Montana Water Court  
PO Box 879  
Bozeman, MT 59771-0879  
1-800-624-3270 (In-state only)  
(406) 586-4364

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
JEFFERSON RIVER BASIN (41G)

\* \* \* \* \*

IN THE MATTER OF THE ADJUDICATION ) CASE NO. 41G-138  
OF THE EXISTING RIGHTS TO THE USE ) 41G-W-182143-00  
OF ALL THE WATER, BOTH SURFACE AND ) 41G-W-182144-00  
UNDERGROUND, WITHIN THE JEFFERSON )  
RIVER DRAINAGE AREA, INCLUDING ALL )  
TRIBUTARIES OF THE JEFFERSON RIVER )  
IN BROADWATER, GALLATIN, MADISON, )  
JEFFERSON AND SILVER BOW COUNTIES, )  
MONTANA. )

**FILED**

DEC - 7 1993

CLAIMANT: Katherine D. Murray, Denison Mines

**Montana Water Court**

MOTION OF MONTANA WATER COURT

OBJECTOR: Katherine D. Murray, Pony Generating Station, Inc.,  
Montana Department of Natural Resources & Conservation,  
Montana Department of Fish, Wildlife and Parks

MASTER'S REPORT

MEMORANDUM

On October 14, 1993 a Scheduling Conference was held in the above-entitled case. Co-claimant Denimil Resources U.S., Inc. (Denimil) failed to appear at the conference. Co-claimant Katherine D. Murray appeared at the conference and indicated at that time that these water right claims had been abandoned through over 40 years of nonuse. Mrs. Murray later verified this statement in an Affidavit and Withdrawal of Claim filed on October 22, 1993. At the Scheduling Conference, objector Montana Department of Natural Resources and Conservation (DNRC) indicated that it would file a Motion with the Water Court requesting that the Court enter a Default Judgment against Denimil.

DNRC filed its Motion for Default Judgment on November 1,

1993 and served a copy on Denimil. In accordance with Rule 55(b), M.R.Civ.P., the Water Court scheduled a telephonic hearing on the DNRC's Motion for November 30, 1993. The purpose of the hearing was to afford Denimil an opportunity to demonstrate good cause why it should not be held in default and why the Court should not enter judgment against Denimil terminating these water right claims.

The Show Cause Hearing was held on November 30, 1993 as scheduled. Denimil failed to appear. At the hearing, DNRC reasserted its Motion for Default Judgment and the other objectors joined in the Motion. As of this date Denimil has not filed a reply brief to the DNRC's Motion.

In this case, co-claimant Denimil is a successor-in-interest to Denison Mines, Ltd., an original co-claimant of these water right claims with William B. and Katherine D. Murray. In this regard, the Court takes notice of the proceedings in case 41G-137 involving the same co-claimants. In that case, by failing to respond to discovery requests, Denimil admitted that it was merely an assignee of the leasehold interest on certain mining properties owned by the Murrays and formerly leased by Denison Mines. Denimil specifically admitted that

. . . when Denison Mines caused its law firm, Crowley Law Firm of Billings, to prepare and file with the Water Court in 1982 Statements of Claim for Existing Water Rights, including the water rights here at issue, Denison Mines was acting as lessee on behalf of the owners of the property, and that the effect of such filing was to elucidate the water rights, decreed or undecreed, described on page 1 of Exhibit 1 as forming part of the leased property.

See Memorandum, Order Granting Motion for Summary Judgment and

Master's Report, Case 41G-137, Montana Water Court, April 26, 1993, p. 9. A review of Statements of Claim in this case and page 1 of Exhibit 1 of the discovery requests in case 41G-137 indicates that this admission is applicable to water right claim 41G-W-182144-00 for the Mountain Cliff Millsite, Survey 3483B; it also appears to be applicable to the adjacent unnamed millsite that is the subject of water right claim 41G-W-182143-00.

A claim of an existing right filed in accordance with § 85-2-221, MCA, constitutes prima facie proof of its content until issuance of a final decree. Section 85-2-227, MCA. Thus, objectors have the burden of proof to present evidence that will overcome the prima facie validity of a claim. As noted by the DNRC in its brief, and in light of the proceedings in Case 41G-137, the affidavit of co-claimant Katherine D. Murray constitutes sufficient evidence to rebut the prima facie validity of water right claims 41G-W-182143-00 and 41G-W-182144-00.

Furthermore, co-claimant Denimil has shown an attitude of unresponsiveness to the judicial process in both this case and Case 41G-137. "A party displaying an attitude of unresponsiveness to the judicial process warrants the imposition of sanctions, including dismissal." Landauer v. Kehrwald, 225 Mont. 322, 732 P.2d 839 (1987). With regard to delinquent parties, the Montana Supreme Court has given a clear signal that the judicial policy of this State is to "punish transgressors rather than patiently trying to encourage their cooperation." Landauer, 225 Mont. at 325.

#### RECOMMENDATIONS

The co-claimant Denimil Resources U.S., Inc. has failed to demonstrate good cause why default judgment should not be

entered against it in accordance with the DNRC's Motion. Therefore, in light of the above, and in accordance with Rule 55(b), M.R.Civ.P. and Landauer, the Master recommends that water right claims 41G-W-182143-00 and 41G-W-182144-00 be terminated. These claims should not appear in the Preliminary or Final Decrees of the Jefferson River Basin (41G).

DATED this 6<sup>th</sup> day of December 1993.

  
Michael J. L. Cusick  
Water Master

CERTIFICATE OF SERVICE

I, Janet Fulcher, Deputy Clerk of Court of the Montana 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 persons listed below by depositing the same, postage prepaid, in the United States mail.

Katherine D. Murray  
5670 S.W. Menefee Dr.  
Portland, OR 97201

Matt Williams, Attorney  
506 E. Babcock  
Bozeman, MT 59715

George Agiorgitis  
Denimil Resources U.S., Inc.  
Nikolaiweg 9, 6100 Darmstadt  
Germany

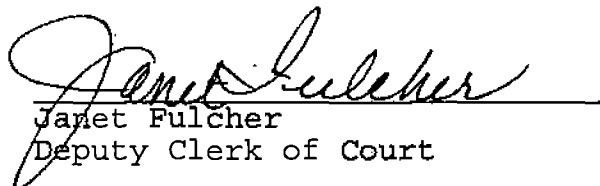
Montana Department of Natural  
Resources and Conservation  
Sarah Bond, Attorney  
1520 E. 6th Ave.  
Helena, MT 59620

Denimil Resources U.S., Inc.  
1626 W. Wisconsin Ave.  
Milwaukee, WI 53233

G. Steven Brown, Attorney  
1313 Eleventh Avenue  
Helena, MT 59601

Pony Generating Station, Inc.  
5160 Wiley Post Way  
Salt Lake City, UT 84116

DATED this 7<sup>th</sup> day of Dec. 1993.

  
Janet Fulcher  
Deputy Clerk of Court

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
JEFFERSON RIVER BASIN (41G)

\* \* \* \* \*

IN THE MATTER OF THE ADJUDICATION  
OF THE EXISTING RIGHTS TO THE USE  
OF ALL THE WATER, BOTH SURFACE AND  
UNDERGROUND, WITHIN THE JEFFERSON  
RIVER DRAINAGE AREA, INCLUDING ALL  
TRIBUTARIES OF THE JEFFERSON RIVER  
IN BROADWATER, GALLATIN, MADISON,  
JEFFERSON AND SILVER BOW COUNTIES,  
MONTANA.

) CASE NO. 41G-138  
) 41G-W-182143-00  
) 41G-W-182144-00

**FILED**

DEC 29 1993

**Montana Water Court**

CLAIMANT: Katherine D. Murray, Denison Mines

MOTION OF MONTANA WATER COURT

OBJECTOR: Katherine D. Murray, Pony Generating Station, Inc.,  
Montana Department of Natural Resources & Conservation,  
Montana Department of Fish, Wildlife and Parks

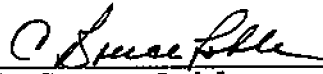
ORDER ADOPTING MASTER'S REPORT

Pursuant to Montana Code Annotated, §85-2-233(4), the above entitled case was assigned to Water Master Michael J. L. Cusick. On December 7, 1993 the Water Master issued a report containing Memorandum and Recommendations. Copies of the report were served upon the parties. Over ten (10) days have elapsed since service, and no objections to the Memorandum and Recommendations have been filed by any party.

The Court has reviewed carefully the Water Master's Memorandum and Recommendations. Pursuant to Rule 53(e), Montana Rules of Civil Procedure, the Court adopts the Master's Report and

ORDERS that changes recommended in the Master's Conclusions of Law be made to the abstract of claim numbers 41G-W-182143-00 and 41G-W-182144-00 as they appear in the Temporary Preliminary Decree of the Jefferson River Basin (41G).

DATED this 29 day of December 1993.

  
\_\_\_\_\_  
C. Bruce Loble  
Chief Water Judge

CERTIFICATE OF SERVICE

I, Janet Fulcher, Deputy Clerk of Court of the Montana Water Court, hereby certify that a true and correct copy of the above ORDER ADOPTING MASTER'S REPORT was duly served upon the persons listed below by depositing the same, postage prepaid, in the United States mail.

Katherine D. Murray  
5670 S.W. Menefee Dr.  
Portland, OR 97201

George Agiorgitis  
Denimil Resources U.S., Inc.  
Nikolaiweg 9, 6100 Darmstadt  
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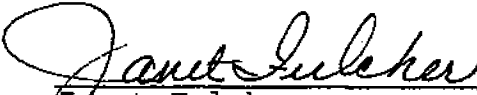
Pony Generating Station, Inc.  
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Matt Williams, Attorney  
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Montana Department of Natural Resources and  
Conservation  
Sarah Bond, Attorney  
1520 E. 6th Ave.  
Helena, MT 59620

G. Steven Brown, Attorney  
1313 Eleventh Avenue  
Helena, MT 59601

DATED this 29 day of December 1993.

  
\_\_\_\_\_  
Janet Fulcher  
Deputy Clerk of Court