

85-2-247. Purpose. (1) Because the state of Montana is the owner of all water in the state, pursuant to Article IX, section 3, of the Montana constitution, the legislature recognizes that it is in the state's best interest to ensure that valid issues raised as a result of claims examination in the statewide adjudication of pre-July 1, 1973, water rights are resolved before a final decree is issued.

(2) If as a result of the examination or the prior verification conducted by the department an issue remark is attached to a claim, the information resulting in the issue remark and the issue remark must be weighed against the claimed water right.

History: En. Sec. 1, Ch. 526, L. 2005.

85-2-248. Resolution of issue remarks other than by objection. (1) In resolving issue remarks other than through the objection process provided for in 85-2-233, the water court shall proceed as provided in this section.

(2) All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.

(3) The water court shall review each factual or legal issue remark not resolved as a result of the filing of an objection to determine if information in the claim file or information obtained by the court provides a sufficient basis to resolve the identified issue remark or to determine if the issue remark can be corrected as a clerical error.

(4) If an issue remark cannot be resolved pursuant to subsection (3), the water court shall notify the claimant in writing that each factual or legal issue remark must be resolved as provided in this section.

(5) (a) The water court shall require the claimant to confer with the department in an informal effort to resolve any identified issue remarks.

(b) If an issue remark is resolved to the satisfaction of the department and the claimant, the claimant, with the assistance of the department, shall prepare and file any documents that are needed to support the resolution. The department shall file a separate memorandum with its recommendation regarding the disposition of any issue remarks involved in the proposed resolution.

(c) If an issue remark is not resolved, the department shall file a notice with the water court informing the water court that the issue remark was not resolved.

(6) The water court shall schedule proceedings to resolve all issue remarks that remain unresolved pursuant to subsections (2) through (5). All proceedings must include the department pursuant to 85-2-243 and any parties appearing in opposition to the claim, including the attorney general if the attorney general has intervened.

(7) (a) If an unresolved issue remark involves nonperfection or abandonment, the water court shall join the state of Montana through the attorney general as a necessary party to resolve the issue remark. The water court shall notify the attorney general of the joinder.

(b) Except as provided in subsection (7)(a), for any claim containing an issue remark that has not been resolved pursuant to subsections (2) through (5), the attorney general may intervene as a matter of right.

(c) The attorney general may adopt rules to implement the responsibilities and duties of the attorney general imposed by this section.

(8) The water court shall hold an evidentiary hearing on any issue remark that remains unresolved pursuant to subsections (2) through (7).

(9) If a claimant fails to appear at a scheduled evidentiary hearing or fails to comply with an order issued by the water court in its review of issue remarks, the water court, upon motion or its own initiative, may, in its ruling:

- (a) amend the elements of the claim to conform with the information in the claim file;
- (b) amend the elements in the claim to conform with information obtained by the court;
- (c) remove the issue remark; or
- (d) terminate the claim.

(10) Following the conclusion of the evidentiary hearing and the expiration of any posthearing briefing schedule, the water court shall render its written decision.