

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK DIVISION  
KOOTENAI RIVER BASIN (76D)  
PRELIMINARY DECREE

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CLAIMANT: United States of America (USDA Forest  
Service)

CASE 76D-0557-R-2024  
76D 45140-00

NOTICE OF INTENT TO APPEAR: Montanore Minerals  
Corp.

**NOTICE OF FILING OF MASTER’S REPORT**

This Master’s Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master’s Report within **10 days** of the stamped date if you disagree or find errors with the Master’s findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master’s Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master’s Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master’s Report.

## MASTER'S REPORT

### Statement of the case

Montanore Minerals Corp. filed a Notice of Intent to Appear for mining claim 76D 45140-00 “to monitor and/or participate in all issues before the court concerning this claim.” The claim also received the following issue remark, added by the court in 1992.

THE CLAIMED VOLUME EXCEEDS MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 60.48 ACRE-FEET PER YEAR.

Montana law requires the Water Court to resolve issue remarks and notices of intent to appear. An order set a filing deadline for claimant, the United States of America (USDA Forest Service) to file their agreement with the 60.48 AF volume identified by the issue remark or to file evidence supporting the historically accurate volume. The United States of America (USDA Forest Service), by and through its counsel of record Maggie Woodward,<sup>1</sup> completed the issue remark process, agreeing with the volume identified by the issue remark.

An order set a filing deadline for Montanore Minerals Corp. to comment on the United States of America (USDA Forest Service's) proposed resolution of the issue remark. Montanore Minerals Corp. filed a response stating the proposed resolution of the issue remark resolved its notice of intent to appear.

### Issue

Is the volume issue remark on claim 76D 45140-00 resolved?

### Findings of fact

1. On February 27, 2024, claimant, the United States of America (USDA Forest Service), filed its Response to Court Order agreeing with the volume identified by the issue remark on mining claim 76D 45140-00.

2. On March 21, 2024, Montanore Minerals Corp. filed its Response to United

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<sup>1</sup> The United States' Response to Court Order, filed by attorney Maggie Woodward, is deemed Ms. Woodward's notice of appearance on behalf of the United States of America (USDA Forest Service). The service list reflects Ms. Woodward's appearance.

States' Response to Court Order. Montanore Minerals Corp. confirmed the reduced volume resolved its Notice of Intent to Appear.

3. The historically accurate volume for mining claim 76D 45140-00 is 60.48 AF.

### **Principles of law**

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. Prima facie proof may be overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a "modest standard" and is evidence that demonstrates the fact to be proved is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. Settlement, including the documents filed by a claimant where the claimant is the only party, is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

4. The Montana Water Court may accept a settlement agreement that reduces or limits an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

5. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

6. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

## **Analysis**

### **Volume issue remark resolution**

The issue remark on claim 76D 45140-00 states the maximum feasible volume based upon the flow rate and period of use is 60.48 AF. Claimant, the United States of America (USDA Forest Service), agrees with the issue remark.

The 60.48 AF volume is less than the volume stipulated to by the parties during Temporary Preliminary Decree proceedings and currently identified by the Preliminary Decree abstract. (*See Case 76D-47, July 22, 1987 Master's Report and Order Adopting*). Accordingly, no further notice of the reduced volume is required.

### **Conclusions of law**

The proposed resolution of the volume issue remark results in a reduction within the parameters of statement of claim 76D 45140-00, justifies the modification to the claim, resolves the issue remark on the claim, and resolves the concerns of Notice of Intent to Appear Party Montanore Minerals Corp.

### **Recommendations**

Mining claim 76D 45140-00 should be modified as follows to accurately reflect historical use.

<b><u>VOLUME:</u></b>	<del>119.00 AF</del>	<b>60.48 AF</b>
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The volume issue remark should be removed from the claim abstract.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm implementation of the recommendations in the state's centralized water right record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via Electronic Mail**

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**Last Order:**

**United States of America (USDA Forest Service)**  
**Water Rights Program Manager, Northern Region**  
**26 Fort Missoula Rd**  
**Missoula MT 59804-7203**  
**MontanaBasins.ENRD@usdoj.gov**

**Service List Updated 4/5/2024**

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
KOOTENAI RIVER  
BASIN 76D**

**Water Right Number:** 76D 45140-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804-7203

**\*Priority Date:** SEPTEMBER 1, 1949

**Type of Historical Right:** FILED

**Purpose (Use):** MINING

**\*Flow Rate:** 224.40 GPM

**\*Volume:** 60.48 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

**Source Name:** LIBBY CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNE	11	27N	31W	LINCOLN

**\*Period of Diversion:** MAY 1 TO JUNE 30

**Diversion Means:** PUMP/HEADGATE W/DITCH OR PIPELINE

**\*Period of Use:** MAY 1 TO JUNE 30

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NESE	11	27N	31W	LINCOLN
2			NWSE	11	27N	31W	LINCOLN
3			SENE	11	27N	31W	LINCOLN
4			SWNE	11	27N	31W	LINCOLN