

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

\* \* \* \* \*

CLAIMANT: Judith L. Hemphill

ON MOTION OF THE MONTANA WATER COURT

**CASE 76D-0583-R-2024**

76D 30127078

76D 30127079

**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**

Claims 76D 30127078 and 76D 30127079 are multiple uses. Multiple uses of a water right occur when one water right is used for more than one purpose. For example, the water right identified by claims 76D 30127078 and 76D 30127079 is used for domestic and stock purposes.

Domestic claim 76D 30127078 received several issue remarks questioning the historical accuracy of the claim's elements and the claim's failure to meet the statutory definition of an exempt claim. Stock claim 76D 30127079 also received several issue remarks questioning the historical accuracy of the claim's elements but did not receive an issue remark regarding the claim's failure to meet the statutory definition of an exempt claim. Due to the claims' multiple use relationship, both claims had the same issue of meeting the statutory definition of an exempt claim. The court called stock claim 76D 30127079 in on motion to determine whether the claim is an exempt claim properly included in the adjudication.

Judith L. Hemphill was provided the opportunity to file evidence refuting this Master's review of the record concerning the claims. The court order informed Judith L. Hemphill that a lack of reply would be deemed her agreement that the claims are not exempt claims and that the claims should be dismissed from the adjudication. Judith L. Hemphill did not file any evidence by the deadline.

### **Issue**

Are claims 76D 30127078 and 76D 30127079 exempt rights pursuant to Section 85-2-222, MCA?

### **Findings of fact**

1. Domestic claim 76D 30127078 and stock claim 76D 30127079 do not meet the definition of an exempt right pursuant to Section 85-2-222, MCA.
2. Domestic claim 76D 30127078 and stock claim 76D 30127079 should be dismissed from the adjudication.

## **Principles of law**

1. A properly filed Statement of Claim for Existing Water Right exempt use is prima facie proof of its content. Section 85-2-222(3), 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. 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.

4. 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.

5. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. If a claimant fails to comply with an Order issued by the Court in its review of issue remarks, the Court may amend the claim to conform with information found in the claim file and information before the Court. Section 85-2-248(9)(a),(b), MCA.

6. According to Rule 8, W.R.Adj.R., the Court may call in a claim/elements of a claim to determine whether its elements accurately reflect pre-July 1, 1973 beneficial use. As directed by Rule 8, W.R.Adj.R., when a claim is called in on motion of the Court, the procedures outlined in § 85-2-248, MCA shall be followed.

7. “‘Existing right’ or ‘existing water right’ means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973.” Section 85-2-102(13), MCA.

8. Exempt rights are existing rights for stock or domestic use of groundwater or instream flow. Section 85-2-222(1), MCA.

## **Analysis**

### **Exempt claim status and dismissal of claims**

The statements of claim identified a pipeline from the source, Lost Creek, as the means of diversion for the claims, and therefore the claims are not instream (direct from source). The claims examiner added an issue remark questioning the exempt status of claim 76D 30127078 but failed to add this issue remark to multiple use claim 76D 30127079. Due to their pipeline means of diversion from Lost Creek, domestic claim 76D 30127078 and stock claim 76D 30127079 fail to meet the definition of an exempt claim.

### **Conclusions of law**

Domestic claim 76D 30127078 and stock claim 76D 30127079 identify a pipeline as their means of diversion from the surface water source. The claims do not meet the definition of an exempt claim and should be dismissed from the adjudication.

### **Recommendations**

Domestic claim 76D 30127078 and stock claim 76D 30127079 should be dismissed.

Post Decree Abstracts of Water Right Claim accompany this report to confirm dismissal of the claims in the state’s centralized water right record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

### **Service via USPS Mail**

Judith L Hemphill  
PO Box 454  
Libby, MT 59923-0454

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

**Water Right Number:** 76D 30127078 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** JUDITH L HEMPHILL  
PO BOX 454  
LIBBY, MT 59923-0454

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** STOCK

**Flow Rate:**

**Volume:**

**Source Name:** LOST CREEK

**Source Type:** SURFACE WATER

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

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

**Water Right Number:** 76D 30127079 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** JUDITH L HEMPHILL  
PO BOX 454  
LIBBY, MT 59923-0454

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** DOMESTIC

**Flow Rate:**

**Volume:**

**Source Name:** LOST CREEK

**Source Type:** SURFACE WATER

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

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.