

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

\*\*\*\*\*

CLAIMANTS: Peggy L. Lundin; Kathleen J. Johnson; Sharon  
S. Rivera; Diane K. Glaizer; Harriet C. Curtiss;  
Larry J. Curtiss; Stephen L. Curtiss

CASE 76D-0593-R-2024  
76D 17990-00

**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**

The above captioned stock claim appeared in the Preliminary Decree with the following issue remark:

THE FLOW RATE IS MISSING.

Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

Montana law requires the Water Court to resolve issue remarks. The issue remark was not resolved through the objection process and while there appeared to be enough information in the claim file and before the court to resolve the issue remark, pursuant to § 85-2-248(11), MCA the court may not resolve an issue remark modifying an element without agreement from the claimants. An order set a filing deadline for claimants to file their agreement with a flow rate of 30.00 GPM or evidence supporting the historical flow rate. Claimants failed to participate in the issue remark resolution process. The court order informed claimants that their lack of reply would be deemed their agreement to the suggested resolution of the issue remark. The court order also included the following language: "Failure to comply with this order may result in modification of your water right."

### **Issue**

What flow rate should stock claim 76D 17990-00 identify?

### **Finding of fact**

The flow rate for stock claim 76D 17990-00 is 30.00 GPM.

## **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. This prima facie proof may be contradicted and 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.

## **Analysis**

### **Issue – flow rate issue remark resolution**

Statement of claim 76D 17990-00 identified a flow rate of 30.00 GPM. Statements of claim are entitled to prima facie proof of their contents. Section 85-2-227, MCA. Based upon this information and pursuant to § 85-2-248(3), MCA, claimants were ordered to file a statement with the court agreeing with the suggested 30.00 GPM flow rate or to file evidence establishing the historical flow rate. Claimants failed to file a statement or evidence by the deadline. Claimants' failure to provide any evidence to address or resolve the flow rate issue remark leaves the suggested 30.00 GPM flow rate as strong evidence of actual historical use.

### **Conclusions of law**

Based on information in the claim file and before the court, and the claimants' failure to comply with an order issued by the court, stock claim 76D 17990-00 should be amended as recommended by the order setting filing deadline. The flow rate issue remark is resolved.

### **Recommendations**

Based upon the foregoing, claim 76D 17990-00 should be amended as follows to accurately reflect historical use.

**FLOW RATE:**                      ~~BLANK~~                      **30.00 GPM**

The flow rate issue remark appearing on the claim should be removed.

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 USPS Mail**

Peggy L. Lundin  
Kathleen J. Johnson  
Sharon S. Rivera  
Diane K. Glaizer  
Harriet C. Curtiss  
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Columbia Falls, MT 59912

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**Eureka, MT 59917-0448**  
**(Returned Mail Received 3/7/2024)**

**Service List Updated 4/10/2024**

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

**Water Right Number:** 76D 17990-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**

HARRIET C CURTISS  
995 JELLISON RD  
COLUMBIA FALLS, MT 59912

LARRY J CURTISS  
PO BOX 448  
EUREKA, MT 59917-0448

STEPHEN L CURTISS  
PO BOX 448  
EUREKA, MT 59917

DIANE K GLAIZER  
995 JELLISON RD  
COLUMBIA FALLS, MT 59912

KATHLEEN J JOHNSON  
995 JELLISON RD  
COLUMBIA FALLS, MT 59912

PEGGY L LUNDIN  
995 JELLISON RD  
COLUMBIA FALLS, MT 59912

SHARON S RIVERA  
995 JELLISON RD  
COLUMBIA FALLS, MT 59912

**Priority Date:** APRIL 20, 1951

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 30.00 GPM

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** MEADOW 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		NENENW	5	34N	26W	LINCOLN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PUMP/GRAVITY FLOW  
2 S2NENW 5 34N 26W LINCOLN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE  
3 SWNWNE 5 34N 26W LINCOLN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Reservoir:** OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENENW	5	34N	26W	LINCOLN

**Diversion to Reservoir:** DIVERSION # 1

**Period of Use:** JANUARY 1 TO DECEMBER 31

**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			NENENW	5	34N	26W	LINCOLN
2			S2NENW	5	34N	26W	LINCOLN
3			SWNWNE	5	34N	26W	LINCOLN