

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: Jo Marie Sheridan; Dennis R. Sheridan; Hazel  
D. Peters

**CASE 76D-0609-R-2024**

76D 140838-00

76D 140839-00

**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**

Irrigation claim 76D 140838-00 received the following issue remarks:

AN AMENDMENT WAS SUBMITTED ON 11/25/2020 REQUESTING TO AMEND THE MEANS OF DIVERSION. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

MEANS OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

Fish and wildlife claim 76D 140839-00 received the following issue remarks:

POINT OF DIVERSION AND RESERVOIR RECORD WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

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. Information in the claim files and before the court resolved the issue remarks.

### **Issues**

1. What is the historically accurate means of diversion for claim 76D 140838-00?
2. Are the issue remarks on claims 76D 140838-00 and 76D 140839-00 resolved?

### **Findings of fact**

1. The historically accurate means of diversion for irrigation claim 76D 140838-00 is a headgate.
2. The Preliminary Decree abstract for fish and wildlife claim 76D 140839-00

identifies the historically accurate elements for the claim.

### **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 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.

### **Analysis**

#### **Issues 1 and 2 – means of diversion claim 76D 140838-00; issue remark resolution**

An issue remark on irrigation claim 76D 140838-00 notes a 2020 amendment to means of diversion was filed but not processed. Claimants explained to DNRC that point of diversion and means of diversion for the claims in this case are the same, and the means of diversion for claim 76D 140838-00 should be headgate (not ditch), to match claim 76D 140839-00. (*See* Nov. 20, 2020 phone log in claim file 76D 140838-00). The

pre-decree amendment for means of diversion should be implemented to resolve the issue remarks concerning the proposed amendment and the means of diversion.

The issue remarks concerning point of diversion, reservoir record, and volume on fish and wildlife claim 76D 140839-00 notified claimants and other water users of their opportunity to review the claim and file an objection to the claim if these elements were not historically accurate. The issue remarks instructed claimants and other water users that if no objections were filed to these elements, the point of diversion, reservoir record, and volume would remain as they appear on the Preliminary Decree abstract. No one objected to the point of diversion, reservoir record, and volume identified by the Preliminary Decree abstract for claim 76D 140839-00.

### **Conclusions of law**

The claimants' proposed pre-decree amendment to the means of diversion identified by irrigation claim 76D 140838-00, and evidence in support of the amendment overcome the prima facie proof afforded the means of diversion identified by the statement of claim, justify the modification to the claim, and resolve the amendment and means of diversion issue remarks on the claim.

The Preliminary Decree abstract for fish and wildlife claim 76D 140839-00 identifies the historically accurate point of diversion, reservoir record, and volume. The issue remarks concerning point of diversion, reservoir record, and volume served their notice purpose.

### **Recommendations**

Irrigation claim 76D 140838-00 should be modified as follows to accurately reflect historical use.

#### **MEANS OF DIVERSION:**

**DITCH**

**HEADGATE**

Fish and wildlife claim 76D 140839-00 accurately reflects historical use. No changes to the elements of the claim should be made.

The issue remarks should be removed from the claim abstracts.

Post Decree Abstracts of Water Right Claim accompany 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**

Jo Marie Sheridan  
Dennis R Sheridan  
144 Parmenter  
Libby MT 59923-2867

Hazel D Peters  
3450 N Hualapai Way  
Las Vegas NV 89129-8049  
(*Deceased*)

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

**Water Right Number:** 76D 140838-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** HAZEL D PETERS  
3450 N HUALAPAI WAY  
LAS VEGAS, NV 89129-8049

DENNIS R SHERIDAN  
144 PARMENTER  
LIBBY, MT 59923-2867

JO MARIE SHERIDAN  
144 PARMENTER  
LIBBY, MT 59923-2867

**Priority Date:** MARCH 28, 1901

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER

**Flow Rate:** 17.00 GPM

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 1.00

**Source Name:** PARMENTER 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		SWNESE	5	30N	31W	LINCOLN

**Period of Diversion:** MAY 1 TO SEPTEMBER 30

**Diversion Means:** HEADGATE  
PUMP IS SECONDARY MEANS OF DIVERSION.

**Period of Use:** MAY 1 TO SEPTEMBER 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	1.00	3	NWNESW	4	30N	31W	LINCOLN

**Total:** 1.00

THE PLACE OF USE IS LOCATED IN GLENWOOD HOMES SUBDIVISION, LOT 3B.

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

**Water Right Number:** 76D 140839-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** HAZEL D PETERS  
3450 N HUALAPAI WAY  
LAS VEGAS, NV 89129-8049

DENNIS R SHERIDAN  
144 PARMENTER  
LIBBY, MT 59923-2867

JO MARIE SHERIDAN  
144 PARMENTER  
LIBBY, MT 59923-2867

**Priority Date:** DECEMBER 31, 1942

**Type of Historical Right:** USE

**Purpose (Use):** FISH AND WILDLIFE

**Flow Rate:** 224.40 GPM

**Volume:** 332.00 AC-FT

**Source Name:** PARMENTER 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		SWNESE	5	30N	31W	LINCOLN

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

**Diversion Means:** HEADGATE

**Reservoir:** OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENESE	4	30N	31W	LINCOLN

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 1.80 FEET

**Depth:** 2.50 FEET

**Surface Area:** 0.09 ACRES

**Capacity:** 0.09 ACRE-FEET

**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			SENESE	4	30N	31W	LINCOLN

**Subdivision:** GLENWOOD HOME SUBD TRACT/LOT: 003