

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: Sighting Amended Family Living Trust

OBJECTOR: United States of America (USDA Forest Service)

CASE 76D-0226-R-2022
76D 30116502

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 United States of America (USDA Forest Service) (“Forest Service”) filed an objection to the priority date, flow rate, and volume elements of domestic claim 76D 30116502.

Domestic claim 76D 30116502 appeared in the Preliminary Decree with the following issue remarks.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 76D DECREE ISSUED 3/22/1984.

NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 1/28/2020, THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY SICHTING FAMILY LIVING TRUST 2018.

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

NO PRIORITY DATE WAS CLAIMED.

A SURFACE WATER NOTICE OF APPROPRIATION WAS SUBMITTED TO SUPPORT THIS CLAIM TO GROUNDWATER APPROPRIATED BETWEEN JANUARY 1, 1962 AND JULY 1, 1973.

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A FILED RIGHT.

NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS 1.5 ACRE-FEET PER YEAR.

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 objections and issue remarks.

The court held a status conference January 11, 2023. Present were attorneys Mark J. Widerschein and Maggie Woodward for objector the Forest Service. Claimant, the Sighting Amended Family Living Trust, failed to appear. The Forest Service requested time to file a suggested resolution of its objection and evidence in support.

On July 24, 2023, the Forest Service filed a Status Report and Motion for Claimant Deadline. The Forest Service reported that claimant was not responsive and moved for amendments to the claim, equating to an order to show cause why the claim should not be amended. Pursuant to Rule 22, W.R.Adj.R., a deadline was set for claimant to Show Cause why the claim should not be amended as proposed by the Forest Service.

Pursuant to § 85-2-248(3), MCA, the court may resolve issue remarks based upon information before the court, or the court may contact claimants for further evidence in an attempt to resolve the issue remarks. The same order setting Show Cause also gave claimant an opportunity to agree or disagree with the court's suggested resolution of several issue remarks appearing on claim 76D 30116502. The order stated that failure to file a statement by the deadline would be deemed claimant's agreement with the court's suggested resolution of the issue remarks. The Sighting Amended Family Living Trust failed to file a response.

Issues

1. Should claim 76D 30116502 be amended as proposed by the Forest Service to resolve the Forest Service's objection?
2. Should claim 76D 30116502 be amended as proposed by the court to resolve the issue remarks appearing on the claim?

Finding of fact

The following amendments should be made to domestic claim 76D 30116502:

- the type of historical right should be "filed,"
- the priority date should be July 3, 2017,
- the flow rate should be 15.00 GPM, and
- the volume should be 1.50 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. 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. When a claimant fails to comply with an Order issued by the Water Court, including an order issued by a Water Master appointed by the Court, the Court upon its own initiative or upon motion, can among other actions: 1) modify the elements of the claim to conform with the information in the claim file, information obtained by the Court, or information included in an objection, or 2) terminate the claim. Rule 22, W.R.Adj.R.

4. 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.

5. 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.

6. 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

Issues 1 and 2 – objection and issue remark resolution

Statement of claim 76D 30116502 identified the claim as a “decreed” water right. Attached to the statement of claim was a filed notice of appropriation for surface water. The filed notice of appropriation does not identify a date of appropriation and is for surface water while claim 76D 30116502 is for groundwater. Groundwater claims filed between January 1, 1962 and July 1, 1973, were required to comply with the 1961 Groundwater Code. The Forest Service explained the significance of the foregoing information from the claim file in its filing for the basis of its proposed priority date. Based upon the foregoing, it appears claim 76D 30116502 is a “filed” right.

Statement of claim 76D 30116502 did not identify a quantified flow rate. The statement of claim identified a “2 inch plastic buried line” as its means of diversion. The filed notice of appropriation included with the statement of claim identifies a flow rate of 2 cubic feet per minute. The Forest Service proposed the claim identify a 15.00 GPM flow rate explaining that 2 cubic feet per minute approximately equals 15.00 GPM and “a flow rate of 2 cubic feet per minute is a reasonable flow rate for domestic use conveyable by two-inch pipe.”

Statement of claim 76D 30116502 did not identify a quantified volume. Based upon DNRC’s claim examination guidelines for a domestic claim that serves one household, domestic claim 76D 30116502 should identify no more than a 1.50 AF volume.

Based upon this information and pursuant to § 85-2-248(3), MCA, claimant was ordered to file a statement with the court agreeing with the suggested July 3, 2017 priority date, “filed” as the type of historical, 15.00 GPM flow rate, and 1.50 AF volume

or to file evidence establishing the historically accurate priority date, type of historical right, flow rate, and volume. Claimant did not file a statement or evidence by the deadline.

The issue remark concerning potential ownership by the Sighting Family Living Trust 2018 was resolved by a March 31, 2020 ownership update to the current claimant.

The issue remark concerning lack of the claim's inclusion in the previous decree provided water users the opportunity to review the claim and file an objection. The deadline to file objections expired. These proceedings resolve the only objection filed to the claim.

Conclusions of law

Claimant's lack of participation leaves the suggested amendments and evidence in support, including several of the issue remarks, as evidence of actual historical use.

Based upon the Forest Service's evidence, and the claimant's repeated failure to comply with orders issued by the Water Master, the Forest Service's requested sanction appears just. The USDA Forest Service's objection is resolved.

Based on information in the claim file and before the court, and the claimant's failure to comply with orders issued by the court, domestic claim 76D 30116502 should be amended as recommended by the order setting filing deadline.

The priority date, type of historical right (including the remark stating a surface water notice of appropriation was submitted for a groundwater appropriation), flow rate, and volume issue remarks are resolved.

The issue remark noting lack of the claim's inclusion in the previous Basin 76D decree served its notice purpose.

Recommendations

Domestic claim 76D 30116502 should be modified as follows to accurately reflect historical use.

<u>PRIORITY DATE:</u>	BLANK	JULY 3, 2017
<u>TYPE OF HISTORICAL RIGHT:</u>	DECREED	FILED

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

Water Right Number: 76D 30116502 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: SICHTING AMENDED FAMILY LIVING TRUST
% LORRAINE B SICHTING TTEE
641 DOAK CREEK RD
LIBBY, MT 59923 9769

***Priority Date:** JULY 3, 2017

Type of Historical Right: FILED

Purpose (use): DOMESTIC

Flow Rate: 15.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF RICE CREEK
Source Type: GROUNDWATER

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		E2SWSW	36	32N	31W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

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			NWNWNW	1	31N	31W	LINCOLN