

Montana Water Court
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FILED
10/25/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
76D-0299-R-2023
Stradley, Anna
3.00

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

* * * * *

CLAIMANTS: Monni G. Clark; Cyril M. Clark

CASE 76D-0299-R-2023
76D 4119-00

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 to 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

Domestic claim 76D 4119-00 appeared in the Preliminary Decree for this Basin with the following issue remark:

IT IS UNCLEAR IF THIS WELL IS LOCATED IN THE NESENE OF SEC 35, T31N, R31W OR IN GOVT LOT 4, NWNW SEC 36, T31N, R31W. THE CLAIM MAP AND CLAIM FORM INDICATE THE WELL IS LOCATED IN SECTION 35; THE TRANSFER INFORMATION, DEED, AND CURRENT OWNERSHIP INDICATE THAT IT IS IN SECTION 36. MORE INFORMATION IS NEEDED TO DETERMINE THE EXACT LOCATION OF THIS WELL.

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. Claimants completed the issue remark resolution process.

Issue

Is the issue remark resolved?

Findings of fact

1. On September 21, 2023, DNRC filed a Memorandum concerning Monni G. Clark’s and Cyril M. Clark’s (Clarks) attempt at resolution of the issue remark. DNRC reported the issue remark was resolved.

2. The Clarks completed a motion to amend domestic claim 76D 4119-00. The amendment identified the historical point of diversion in Government Lot 4, NWNW of Section 36, Township 31 North, Range 31 West.

3. A preponderance of evidence establishes the historically accurate point of diversion for claim 76D 4119-00 is Government Lot 4, NWNW of Section 36, Township 31 North, Range 31 West.

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. If the settlement agreement expands or enlarges an element of a claim, the burden of proof must be met. If evidence does not meet the burden of proof, the element shall not be expanded or enlarged. Rule 17(b), W.R.Adj.R.

5. 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.

6. 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.

7. If the Montana Water Court cannot resolve issue remarks based upon information in the claim file or information available to the Court, claimants shall be required to confer with the DNRC to attempt resolution of the issue remarks. Claimants shall file documentation to resolve the issue remarks, and the DNRC shall submit recommendations regarding disposition of the issue remarks. Section 85-2-248(5), MCA.

Analysis

Issue remark resolution

DNRC reviewed the claim file and visited with Mr. Clark. The hand drawn map included with the statement of claim depicts the point of diversion for the domestic well

in Section 35, Township 31 North, Range 31 West. Mr. Clark explained that most of the property is in Section 36, Township 31 North, Range 31 West, but a small section of the northwest of the property is in Section 35, Township 31 North, Range 31 West.

DNRC reviewed current aerial photos from the Montana Cadastral website and the location of the Florence Road, a clear landmark on the hand drawn map. Based upon its review of the aerial photos, DNRC found that the Florence Road is about “1/10 of a mile further east than is recorded on the original claimant’s map.” Placing the road in its correct location results in a slight shift of location of the point of diversion into Section 36, Township 31 North, Range 31 West.

Mr. Clark confirmed the historical point of diversion is in Government Lot 4, NWNW of Section 36, Township 31 North, Range 31 West (agreeing with the issue remark on the claim). DNRC recommends removal of the issue remark and acceptance of the Clarks’ proposed modification.

Conclusion of law

Clarks’ proposed modification to the point of diversion overcomes prima facie statement of claim 76D 4119-00, justifies the modification to the claim, and resolves the point of diversion issue remark on the claim.

Recommendations

Domestic claim 76D 4119-00 should be modified as follows to accurately reflect historical use.

POINT OF DIVERSION:

<u>GOVT LOT</u>	<u>QTR</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
4	NWNW	NESENE 36 35	31N	31W	LINCOLN

The 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 USPS Mail

Monni G Clark
Cyril M Clark
319 Warren Rd
Libby MT, 59923-9378

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

Water Right Number: 76D 4119-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MONNI G CLARK
319 WARREN RD
LIBBY, MT 59923 9378

CYRIL M CLARK
319 WARREN RD
LIBBY, MT 59923 9378

Priority Date: JULY 31, 1960

Type of Historical Right: FILED

Purpose (use): DOMESTIC

Flow Rate: 7.00 GPM

Volume: 1.50 AC-FT

Households: 1

Maximum Acres: 1.75

Source Name: GROUNDWATER

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	4	NWNW	36	31N	31W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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	1.75		NESENE	35	31N	31W	LINCOLN

Total: 1.75