

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: Kootenai Holdings LLC

CASE 76D-0500-R-2023
76D 141655-00

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 141655-00 appeared in the Preliminary Decree for this Basin with the following issue remark:

THE MEANS OF DIVERSION FOR POINT OF DIVERSION NO.2 COULD NOT BE IDENTIFIED FROM AVAILABLE DATA SOURCES.

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. Claimant completed the issue remark resolution process.

Issue

Is the means of diversion issue remark resolved?

Findings of fact

1. On July 25, 2023, DNRC filed a Memorandum concerning Kootenai Holdings LLC’s attempt at resolution of the issue remark. DNRC reported the issue remark was resolved.

2. On August 8, 2023, DNRC filed an email from Charlie Stevens on behalf of Kootenai Holdings LLC agreeing that the means of diversion for the point of diversion in the SWNESW of Section 5, Township 29 North, Range 31 West, Lincoln County should be pipeline.

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. 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. 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

Statement of claim 76D 141655-00 identified the means of diversion as pump and gravity flow. The DNRC visited with Charlie Stevens. Mr. Stevens confirmed the means of diversion should be pipeline for the point of diversion in the SWNESW of Section 5, Township 29 North, Range 31 West, Lincoln County. Mr. Stevens’ proposed modification agrees with the statement of claim, the map attached to the statement of claim, and with the filed notice of appropriation attached to the statement of claim. The

DNRC recommends removal of the issue remark and acceptance of Mr. Stevens' proposed modification.

Conclusion of law

Mr. Stevens' confirmation of the means of diversion identified by prima facie statement of claim 76D 141655-00 for the point of diversion in the SWNESW of Section 5, Township 29 North, Range 31 West, Lincoln County, justifies the modification to the claim and resolves the means of diversion issue remark on the claim.

Recommendations

Domestic claim 76D 141655-00 should be modified as follows to accurately reflect historical use.

MEANS OF DIVERSION FOR POINT OF DIVERSION IN THE SWNESW OF SECTION 5, TOWNSHIP 29 NORTH, RANGE 31 WEST, LINCOLN COUNTY:

~~FLOWING~~

PIPELINE

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

Kootenai Holdings LLC
PO Box 782257
Wichita, KS 67278

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

Water Right Number: 76D 141655-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: KOOTENAI HOLDINGS LLC
PO BOX 782257
WICHITA, KS 67278

Priority Date: MAY 22, 1917

Type of Historical Right: FILED

Purpose (use): DOMESTIC

Flow Rate: 25.00 GPM

Volume: 5.50 AC-FT

Households: 4

Maximum Acres: 2.00

Source Name: GRANITE 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		SE	5	29N	31W	LINCOLN
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	PUMP					
2		SW	5	29N	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	2.00		NE	5	29N	31W	LINCOLN
Total:	2.00						