

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

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

CLAIMANTS: ~~United States of America (USDA Forest Service);~~ Libby Placer Mining Co.

CASE 76D-0558-R-2024

76D 141300-00

76D 141301-00

OBJECTOR: United States of America (USDA Forest Service)

NOTICE OF INTENT TO APPEAR: Montanore Minerals Corp.

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 ownership of commercial claim 76D 141301-00. Montanore Minerals Corp. filed a Notice of Intent to Appear for commercial claim 76D 141301-00 “to monitor and/or participate in all issues before the court concerning this claim.” The claim also received the following notice issue remark.

POINT 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.

During these proceedings, the Forest Service filed a Motion to Consolidate Claim 76D 141300-00 into this case explaining it also had an ownership concern for mining claim 76D 141300-00. Because mining claim 76D 141300-00 and commercial claim 76D 141301-00 are multiple uses of a water right and changes made to one claim may need to be made to another, the Water Court called claim 76D 141300-00 in on its own motion to ensure that the claim’s elements accurately reflect pre-July 1, 1973 beneficial use.

Montana law requires the Water Court to resolve issue remarks, objections, notices of intent to appear, and any on motion concerns of the court. An order set a filing deadline for the Forest Service to resolve its ownership concerns. The Forest Service, by and through its counsel of record Mark J. Weiderschein, filed information resolving its ownership objection to claim 76D 141301-00 and its ownership concerns for claim 76D 141300-00.

An order set a filing deadline for Montanore Minerals Corp. to comment on the Forest Service’s proposed resolution of its objection to claim 76D 141301-00. Montanore Minerals Corp. filed a response stating the proposed resolution of the objection to claim 76D 141301-00 resolved its concerns if Libby Placer Mining Co. became the sole owner of claim 76D 141301-00, and no other elements of the claim were modified.

Issues

Are the objection, notice of intent to appear concerns, the issue remark, and the court's on motion resolved?

Findings of fact

1. On July 11, 2024, the Forest Service filed its Proposed Resolution of Objection confirming that it has no ownership interest in either of the claims in this case.

2. On July 23, 2024, Montanore Minerals Corp. filed its Response to United States' Proposed Resolution of Objection. Montanore Minerals Corp. confirmed resolution of its Notice of Intent to Appear based upon Libby Placer Mining Co. appearing as the sole owner of commercial claim 76D 141301-00.

3. The Forest Service should be removed from the ownership of commercial claim 76D 141301-00, and Libby Placer Mining Co. should be added to the ownership of the claim.

4. All other elements of the Preliminary Decree abstracts for multiple use claims 76D 141300-00 and 76D 141301-00 are historically accurate.

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. According to Rule 8, W.R.Adj.R., the Court may call in a claim/elements of a claim to determine whether its elements accurately reflect pre-July 1, 1973 beneficial use. As directed by Rule 8, W.R.Adj.R., when a claim is called in on motion of the Court, the procedures outlined in § 85-2-248, MCA shall be followed.

5. 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.

6. 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

Objection, notice of intent to appear, on motion, and issue remark resolution

Based on the evidence and explanation filed by the Forest Service and information in claim file 76D 141301-00, the Forest Service should be removed from the ownership of commercial claim 76D 141301-00 and Libby Placer Mining Co. should be added back to the ownership of the claim.

The issue remark on claim 76D 141301-00 notes point of diversion was modified by DNRC during claims examination. The issue remark instructed claimant and other water users that if no objections were filed to the point of diversion identified by the issue remark, the element would remain as it appears on the Preliminary Decree abstract. The only objection to claim 76D 141301-00 is resolved by these case proceedings.

Based on the evidence and explanation filed by the Forest Service and information in claim file 76D 141300-00, there are no ownership concerns for mining claim 76D 141300-00.

The evidence and explanation filed by the Forest Service for both claims may be

viewed on the court's case management system, FullCourt Enterprise, at document sequence 8.50.

Conclusions of law

The Forest Service's proposed correction to ownership resolves its objection to commercial claim 76D 141301-00, justifies the correction to the ownership of the claim, and resolves the concerns of Notice of Intent to Appear Party Montanore Minerals Corp.

The Preliminary Decree abstract for commercial claim 76D 141301-00 identifies the historically accurate point of diversion. The issue remark concerning point of diversion served its notice purpose.

No changes should be made to any elements of mining claim 76D 141300-00. The court's on motion concerns regarding mining claim 76D 141300-00 are resolved.

Recommendations

Other than removing the Forest Service from the ownership of claim 76D 141301-00, mining claim 76D 141300-00 and commercial claim 76D 141301-00 accurately reflect historical use. No other changes to the elements of the claims should be made.

The issue remark should be removed from the abstract of claim 76D 141301-00.

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

Libby Placer Mining Co
c/o JA Cleveland
6810 N Roxborough Park Rd
Littleton CO 80125-9308

Service via Electronic Mail

Mark J. Widerschein
U.S. Dept of Justice, ENRD-NRS
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 532-5803
Mark.Widerschein@usdoj.gov
MontanaBasins.ENRD@usdoj.gov

Ryan McLane
William P. Driscoll
Franz & Driscoll, PLLP
PO Box 1155
Helena, MT 59624-1155
(406) 442-0005
ryan@franzdriscoll.com
wpd@franzdriscoll.com
office@franzdriscoll.com

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

Water Right Number: 76D 141300-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LIBBY PLACER MINING CO
% JA CLEVELAND
6810 N ROXBOROUGH PARK RD
LITTLETON, CO 80125-9308

Priority Date: MAY 9, 1925

Type of Historical Right: FILED

Purpose (Use): MINING

***Flow Rate:** 1.00 CFS

***Volume:** 521.60 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

THE VOLUME QUANTIFICATION ON THIS CLAIM IS THE RESULT OF A STIPULATION FILED BY THE PARTIES WITH THE WATER COURT ON 12/02/92. THE COURT HAS MADE NO DETERMINATION AS TO THE NEED FOR A VOLUME QUANTIFICATION ON THIS CLAIM AS PROVIDED FOR IN 85-2-234 (6) (B) (III) M.C.A.

Source Name: LIBBY 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		SWNWSE	11	27N	31W	LINCOLN

Period of Diversion: APRIL 1 TO DECEMBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO DECEMBER 15

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			E2	36	28N	31W	LINCOLN

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

141290-00 141291-00 141300-00 141301-00

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

Water Right Number: 76D 141301-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LIBBY PLACER MINING CO
% JA CLEVELAND
6810 N ROXBOROUGH PARK RD
LITTLETON, CO 80125-9308

Priority Date: MAY 9, 1925

Type of Historical Right: FILED

Purpose (Use): COMMERCIAL
WATER USED FOR BUNK HOUSE AND COOK HOUSE.

Flow Rate: 25.00 GPM

Volume: 1.50 AC-FT

Source Name: LIBBY 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		NESESW	36	28N	31W	LINCOLN

Period of Diversion: APRIL 1 TO DECEMBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO DECEMBER 15

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			SESESW	36	28N	31W	LINCOLN

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

141290-00 141291-00 141300-00 141301-00