

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: Yorlum Development Ltd.; **Theodora D. Brennan; David R. Brown; Siri A. Larsen; Chris S. Neill; Mark W. Rice; Theodora D. Rice; Sandra West; Eiko Iwasaki; Kojiro Iwasaki; Jay R. Lee; Joe D. Lee**

CASE 76D-0594-R-2024
76D 141365-00
76D 141366-00
76D 141367-00

ON MOTION OF THE WATER COURT

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

FINDINGS OF FACT

1. Domestic spring claim 76D 141366-00 appeared in the Preliminary Decree with a priority date of May 1, 1966, and with the following issue remark concerning the priority date:

THE PRIORITY DATE MAY BE QUESTIONABLE. NO DOCUMENTATION AS REQUIRED BY THE 1961 GROUNDWATER CODE WAS SUBMITTED TO SUPPORT THIS CLAIM.

2. The claim received no objections. The issue remark was not addressed and resolved during the objection process. The Montana Legislature directs the Water Court to resolve issue remarks using the procedures set forth in § 85-2-248, MCA.

3. The 1961 Ground Water Code required the filing of certain documents with the county clerk and recorder's office to establish a priority date for groundwater appropriated between January 1, 1962 and July 1, 1973. Neither a Notice of Appropriation nor a Notice of Completion was filed in support of the priority date claimed by Statement of Claim 76D 141366-00. Therefore, it appeared that the priority date should be the date the Statement of Claim was filed, April 30, 1982.

4. Pursuant to Section 85-2-248(3), MCA an order set a deadline for claimant, Yorlum Development Ltd., to file a copy of a duly filed Notice of Appropriation and/or Notice of Completion to support the earlier claimed priority date of May 1, 1966.

5. Yorlum Development Ltd. filed what appeared to be a filed notice of appropriation for surface water, although the document's title was missing, and the document did not include an official clerk and recorder file stamp. This document does not fulfill the filing requirements of the 1961 Ground Water Code.

6. Based upon the current record, the priority date for claim 76D 141366-00 should be the date the Statement of Claim was filed, April 30, 1982. The type of historical right should be changed from "use" to "filed."

7. The issue remark regarding priority date should be removed as it has been resolved.

8. Domestic claim 76D 141366-00 includes an information remark noting its multiple use relationship with two other claims, 76D 141365-00 and 76D 141367-00. Multiple uses of a water right occur when one water right is used for more than one purpose.

Upon review:

- Stock claim 76D 141365-00 and irrigation claim 76D 141367-00 identify three springs as their source and domestic claim 76D 141366-00 identifies only one of the three springs as its source.
- The conveyance system described by the statements of claim 76D 141365-00 and 76D 141367-00 and their attachments differs from the conveyance system identified by domestic statement of claim 76D 141366-00.
 - Statements of claim 76D 141365-00 and 76D 141367-00 identify a system of pits collecting the water from the three springs. Based upon the conveyance system, claims 76D 141365-00 and 76D 141367-00 appear to be surface water rather than groundwater, thereby avoiding the filing requirements of the 1961 Ground Water Code.
 - Statement of claim 76D 141366-00 identifies one of the three springs and states for domestic use the spring is “unnamed off Doxy’s Meadow improved with well curbing.” Based upon the conveyance system, domestic claim 76D 141366-00 is properly classified as groundwater, and the filing requirements of the 1961 Ground Water Code apply.

Due to the modified priority date and type of historical right for claim 76D 141366-00 and a review of all three claim files, the multiple use information remark on claims 76D 141365-00 and 76D 141367-00 should no longer include claim 76D 141366-00. Claims 76D 141365-00 and 76D 141367-00 are called in on motion of the court to correct the source type and to update the multiple use information remark.

CONCLUSIONS 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.

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.

5. Montana law required an appropriator of groundwater by means of a well between January 1, 1962 and July 1, 1973 to timely file a Notice of Completion of Groundwater Appropriation with the county clerk of the county in which the appropriation was located. Section 89-2913(d), RCM (1963). Until an appropriator filed a Notice of Completion no right to use the water was recognized. Section 89-2913(e), RCM (1963). These provisions were repealed in 1973 with the enactment of § 85-2-306, MCA. The statute provides:

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962 and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim

of existing water right pursuant to 85-2-221[a Statement of Claim] is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice as provided in subsection (3), or the date of the filing of the claim of existing water right.

6. As a Notice of Completion was not filed for domestic claim 76D 141366-00, the priority date of the claimed appropriation for the 1961 Ground Water Code is the date of the filing of the Statement of Claim. Section 85-2-306(4), MCA.

7. 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.

8. There is sufficient information to resolve the issue remark appearing on claim 76D 141366-00.

RECOMMENDATIONS

The claims should be modified as follows to accurately reflect historical use.

Domestic Claim 76D 141366-00

<u>PRIORITY DATE:</u>	MAY 1, 1966	APRIL 30, 1982
<u>TYPE OF HISTORICAL RIGHT:</u>	USE	FILED

~~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.~~
141365-00 141366-00 141367-00

Stock Claim 76D 141365-00 and Irrigation Claim 76D 141367-00

<u>SOURCE TYPE:</u>	GROUNDWATER	SURFACE WATER
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~~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.~~
141365-00 141366-00 141367-00

The priority date issue remark should be removed from the abstract of domestic claim 76D 141366-00.

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

Yorlum Development Ltd
9 Royal Terrace Ct
Dallas, TX 75225-1828

David R. Brown
370 Creekside Dr
Eureka, MT 59917

Siri A. Larsen
Chris S. Neill
2525 Grave Creek Rd
Eureka, MT 59917-9609

Theodora D. Brennan
Mark W. Rice
Theodora D. Rice
PO Box 254
Fortine, MT 59918

Sandra West
9340 Butwell St
Livonia, MI 48150

Service via USPS Mail

Eiko Iwasaki
PO Box 1965
Eureka, MT 59917

Kojiro Iwasaki
1515 Silver Trail
Napa, CA 94558

Jay R. Lee
PO Box 341
Fortine, MT 59918

Joe D. Lee
1145 Brittany Cir
Colorado Springs, CO 80918

Note: Caption and Service List Updated 7/11/2024

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

Water Right Number: 76D 141365-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

THEODORA D BRENNAN

PO BOX 254

FORTINE, MT 59918

DAVID R BROWN

370 CREEKSIDE DR

EUREKA, MT 59917

SIRI A LARSEN

2525 GRAVE CREEK RD

EUREKA, MT 59917

CHRIS S NEILL

2525 GRAVE CREEK RD

EUREKA, MT 59917-9609

MARK W RICE

PO BOX 254

FORTINE, MT 59918

THEODORA D RICE

PO BOX 254

FORTINE, MT 59918

SANDRA WEST

9340 BUTWELL ST

LIVONIA, MI 48150

YORLUM DEVELOPMENT LTD

9 ROYAL TERRACE CT

DALLAS, TX 75225-1828

Priority Date: MAY 1, 1966

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF TOBACCO RIVER

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		NESWSE	1	35N	26W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

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			N2N2	12	35N	26W	LINCOLN
2			S2S2	1	35N	26W	LINCOLN
3			S2SE	2	35N	26W	LINCOLN
4			N2NE	11	35N	26W	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.

141365-00 141367-00

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

Water Right Number: 76D 141366-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: YORLUM DEVELOPMENT LTD
9 ROYAL TERRACE CT
DALLAS, TX 75225-1828

Priority Date: APRIL 30, 1982

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 25.00 GPM

Volume: 1.50 AC-FT

Households: 1

Maximum Acres: 0.50

Source Name: SPRING, UNNAMED TRIBUTARY OF TOBACCO RIVER

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		NESWSE	1	35N	26W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

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	0.50		NESWSE	1	35N	26W	LINCOLN

Total: 0.50

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME PLACE OF USE.

85759-00 141366-00

THIS CLAIM IS ASSOCIATED TO 76D 85759-00. THEY HAVE OVERLAPPING PLACES OF USE.

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

Water Right Number: 76D 141367-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

THEODORA D BRENNAN
PO BOX 254
FORTINE, MT 59918

DAVID R BROWN
370 CREEKSIDE DR
EUREKA, MT 59917

EIKO IWASAKI
PO BOX 1965
EUREKA, MT 59917

KOJIRO IWASAKI
1515 SILVER TRAIL
NAPA, CA 94558

SIRI A LARSEN
2525 GRAVE CREEK RD
EUREKA, MT 59917

JAY R LEE
PO BOX 341
FORTINE, MT 59918

JOE D LEE
1145 BRITTANY CIR
COLORADO SPRINGS, CO 80918

CHRIS S NEILL
2525 GRAVE CREEK RD
EUREKA, MT 59917-9609

MARK W RICE
PO BOX 254
FORTINE, MT 59918

THEODORA D RICE
PO BOX 254
FORTINE, MT 59918

SANDRA WEST
9340 BUTWELL ST
LIVONIA, MI 48150

Priority Date: MAY 1, 1966

Type of Historical Right: USE
Purpose (Use): IRRIGATION
Irrigation Type: SPRINKLER/FURROW
Flow Rate: 170.00 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: 20.00
Source Name: SPRING, UNNAMED TRIBUTARY OF TOBACCO RIVER
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		NESWSE	1	35N	26W	LINCOLN

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO OCTOBER 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	10.00		NENW	12	35N	26W	LINCOLN
2	10.00		SESW	1	35N	26W	LINCOLN
Total:	20.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

141367-00 141369-00

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.

141365-00 141367-00