

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

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CLAIMANTS: ~~John A. Sneesby~~; Idell Weydemeyer Survivors  
Trust; David Meredith Bypass Trust

CASE 76D-0518-R-2023  
76D 7699-00

**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 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 above captioned irrigation claim appeared in the Preliminary Decree with the following issue remarks:

SOURCE NAME 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.

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

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, DNRC adds an issue remark to the claim. DNRC may also add issue remarks providing notice to water users concerning a claim.

Montana law requires the Water Court to resolve issue remarks. Information before the court resolved the source issue remark. An order set a filing deadline for claimants to file their agreement with "use" as the type of historical right or evidence supporting the type of historical right. Claimants failed to participate in the issue remark resolution process. The court order informed claimants that their lack of reply would be deemed their agreement to the suggested resolution of the issue remark. The court order also included the following language: "Failure to comply with this order may result in modification of your water right." All elements appeared on the objection list for irrigation claim 76D 7699-00.

After issuance of the order setting filing deadline, the court received a telephone call from Idell Weydemeyer, a representative of the Trusts. Ms. Weydemeyer explained

that John A. Sneesby had no ownership interest in the above captioned claim and that Mr. Sneesby agreed and filed a document with DNRC so stating. On October 17, 2023, DNRC filed a request to withdraw ownership interest from co-claimant John A. Sneesby.<sup>1</sup> Based upon this conversation, the court provided an additional owner of the place of use identified by the claim (south of Crystal Lakes Road), John Bernath, the opportunity to file his agreement that his place of use should also not be included on irrigation claim 76D 7699-00. On March 11, 2024, the Trusts filed Mr. Bernath's agreement with the court.

### **Issues**

1. Should the ownership, maximum acres irrigated, and place of use for irrigation claim 76D 7699-00 be modified?
2. What type of historical right should irrigation claim 76D 7699-00 identify?
3. Are the issue remarks resolved?

### **Findings of fact**

1. John A. Sneesby should not be identified as an owner of irrigation claim 76D 7699-00.
2. The acres irrigated and places of use in Section 25, Township 35 North, Range 26 West, Lincoln County should be removed from irrigation claim 76D 7699-00. The place of use is owned entirely by the Trusts and should reflect 19.00 acres of irrigation in Section 24, Township 35 North, Range 26 West, Lincoln County.
3. The type of historical right for irrigation claim 76D 7699-00 should be "use."
4. The Preliminary Decree abstract for irrigation claim 76D 7699-00 identifies the

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<sup>1</sup> Received by DNRC on December 12, 2022.

historically accurate source.

### **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. 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. 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. 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. 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**

### **Issue 1 - ownership, maximum acres irrigated, and place of use**

A review of claim file 76D 7699-00, including the prima facie statement of claim, maps attached to the statement of claim, the chains of title in the claim file, along with the Montana Cadastral Database indicated that John A. Sneesby and John J. Bernath, own the places of use identified by claim 76D 7699-00 in Section 25, Township 35 North, Range 26 West, Lincoln County, south of Crystal Lakes Road, and the David Meredith Bypass Trust and Idell Weydemeyer Survivors Trust (“Trusts”) own the places of use in Section 24, Township 35 North, Range 26 West, Lincoln County, north of Crystal Lakes Road.

On October 17, 2023, John A. Sneesby filed a request to withdraw interest in statement of claim 76D 7699-00. Mr. Sneesby stated “no claim to waters not on his property.” A copy of this request may be viewed on the court’s case management system, FullCourt Enterprise, at document sequence 2.00. On March 11, 2024, the Trusts filed a request to sever (DNRC Form 642) for claim 76D 7699-00. The documentation in support of the request to sever included a signed statement from Mr. Bernath. Mr. Bernath agreed his place of use should not be included on claim 76D 7699-00. A copy of this request may be viewed on the court’s case management system, FullCourt Enterprise, at document sequence 8.00.

### **Conclusions of law**

Mr. Sneesby’s request to withdraw interest in statement of claim and Mr. Bernath’s agreement with the request to sever support the removal of Mr. Sneesby from the ownership of claim 76D 7699-00 and removal of the acres irrigated and the places of

use south of Crystal Lakes Road in Section 25, Township 35 North, Range 26 West, Lincoln County from claim 76D 7699-00.

## **Analysis**

### **Issues 2 and 3 - type of historical right; issue remark resolution**

Based upon a review of the record before the court, the statement of claim identified the claim as both a filed appropriation right and a use water right, a handwritten note on the statement of claim reads “first used about 1918.” Co-claimant at the time, Winton W. Weydemeyer, also included a statement with the statement of claim. The statement reads that water from the source, “was first used for irrigation (NE ¼ SW ¼) about 1918.” The foregoing information, located in the claim file, taken together with the claimed priority date indicates claim 76D 7699-00 is a “use” right, thereby resolving the issue remark.

Based upon this information and pursuant to § 85-2-248(3), MCA, claimants were ordered to file a statement with the court agreeing with the suggested type of historical right (“use”) or to file evidence establishing the type of historical right. Claimants failed to file a statement or evidence by the deadline.

Claimants’ failure to provide any evidence to address or resolve the type of historical right issue remark leaves Winton E. Weydemeyer’s statement of use, included with the statement of claim, as strong evidence of the type of historical right.

An additional issue remark on claim 76D 7699-00 notes source was modified by DNRC during claims examination. The source issue remark instructed claimants and other water users that if no objections were filed to the source it would remain as it appears on the Preliminary Decree abstract. No one objected to the source of claim 76D 7699-00.

## **Conclusions of law**

Based on information in the claim file and before the court, and the claimants' failure to comply with an order issued by the Water Master, the type of historical right for irrigation claim 76D 7699-00 should be "use." The type of historical right issue remark is resolved.

The source issue remark served its notice purpose.

**Recommendations**

Based upon the foregoing, irrigation claim 76D 7699-00 should be amended and modified as follows to accurately reflect historical use.

**OWNERSHIP:** JOHN A SNEESBY; IDELL WEYDEMEYER SURVIVORS TRUST; DAVID MEREDITH BYPASS TRUST

**TYPE OF HISTORICAL RIGHT:** ~~BLANK~~ **USE**  
**MAXIMUM ACRES:** ~~49.00~~ **19.00**

**PLACE OF USE:**

<u>ACRES</u>	<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
10.00		W2SWSE	24	35N	26W	LINCOLN
9.00		E2SESW	24	35N	26W	LINCOLN
<del>17.00</del>		<del>N2NWNE</del>	<del>25</del>	<del>35N</del>	<del>26W</del>	<del>LINCOLN</del>
<del>3.00</del>		<del>SWNWNE</del>	<del>25</del>	<del>35N</del>	<del>26W</del>	<del>LINCOLN</del>
<del>10.00</del>		<del>E2NENW</del>	<del>25</del>	<del>35N</del>	<del>26W</del>	<del>LINCOLN</del>

**TOTAL: 19.00 ~~49.00~~**

The issue remarks appearing on the claim should be removed.

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**

David Meredith Bypass Trust, % Clark D  
Meremeyer Ttee  
Idell Weydemeyer Survivors Trust  
877 N Rancho Rd  
El Sobrante CA 94803-1123

**Last Order:**

John A Sneesby  
PO Box 460  
Fortine MT 59918-0460

**Last Order Potential Owner:**

John J Bernath  
PO Box 154  
Fortine, MT 59918-0154

**Service via Electronic Mail**

**This Order Only:**

Kalispell Regional Office, DNRC  
Water Resources  
655 Timberwolf Parkway, Ste 4  
Kalispell, MT 59901-1215  
(406) 752-2288 phone  
(406) 752-2843 fax  
jferch@mt.gov



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

**Water Right Number:** 76D 7699-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** MEREDITH, DAVID BYPASS TRUST  
CLARK D MEREMEYER TTEE  
877 N RANCHO RD  
EL SOBRANTE, CA 94803-1123  
  
WEYDEMEYER, IDELL SURVIVORS TRUST  
877 N RANCHO RD  
EL SOBRANTE, CA 94803

**Priority Date:** DECEMBER 31, 1918

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** MULTIPLE METHODS

**Flow Rate:** 275.00 GPM

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 19.00

**Source Name:** SPRING, UNNAMED TRIBUTARY OF FORTINE CREEK

**Source Type:** SURFACE WATER  
ALSO KNOWN AS BIG SPRING

**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	24	35N	26W	LINCOLN

**Period of Diversion:** MAY 15 TO JULY 20

**Diversion Means:** PUMP

**Period of Use:** MAY 15 TO JULY 20

**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		W2SWSE	24	35N	26W	LINCOLN
2	9.00		E2SES	24	35N	26W	LINCOLN
<b>Total:</b>	19.00						