

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

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

CLAIMANT: Mark M. Mohr

CASE 76D-0540-R-2023
76D 30123427

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 30123427 appeared in the Preliminary Decree for this Basin with the following issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 76D DECREE ISSUED 03/22/1984.

USDA AERIAL PHOTOGRAPH NO(S). 279-254, DATED 8/9/1979, APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

THE CLAIMED PLACE OF USE DOES NOT APPEAR TO BE USED FOR DOMESTIC IRRIGATION PURPOSES.

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

NO VOLUME HAS BEEN CLAIMED.

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

Are the issue remarks resolved?

Findings of fact

1. On March 4, 2024, DNRC filed a Memorandum concerning Mark M. Mohr’s attempt at resolution of the issue remarks. DNRC reported the issue remarks were resolved.

2. Mr. Mohr completed an amendment to the claim reducing the maximum acres irrigated to 1.50. The maximum numbers of acres historically irrigated by claim 76D 30123427 are 1.50.

3. The volume should be 5.25 AF.

Principles of law

1. A properly filed Statement of Claim for Existing Water Right exempt use is prima facie proof of its content. Section 85-2-222(3), 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 a 1979 aerial photograph and visited with Mr. Mohr. Mr. Mohr provided an Affidavit from Leonard H. Koskela, a neighbor and long-time resident to the west of his property. The Koskela Affidavit affirmed the well on Mr. Mohr's property served a cabin and garden since 1965.

DNRC reviewed the place of use on the 1979 aerial photograph resulting in the zero acres irrigated issue remark. The aerial photograph is overexposed and does not support the zero acres irrigated issue remark. The 1979 aerial photograph confirms a small structure on the property commensurate with the cabin described by Mr. Koskela.

Mr. Mohr confirmed 1.50 acres of domestic irrigation but did not mention volume. DNRC proposed a 5.25 AF volume based upon the DNRC guidelines of 1.50 AF/household (the statement of claim identified 1 household) and 2.50 AF/acre of domestic irrigation.¹ The proposed volume, based upon DNRC guidelines, does not raise any concerns. **If Mr. Mohr disagrees with DNRC's proposed volume of 5.25 AF, he should file an objection to this Master's Report.**

DNRC recommended removal of the maximum acres irrigated, place of use, and volume issue remarks and acceptance of Mr. Mohr's proposed reduction to the maximum acres irrigated. The DNRC Memorandum and the aforementioned evidence may be viewed on the court's case management system, FullCourt Enterprise, at document sequence 4.00.

The claim appeared in the Preliminary Decree with the following notice issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 76D DECREE ISSUED 03/22/1984.

Water users were given the opportunity to review the claim and file an objection.

¹ Rule 19(b), Water Right Claim Examination Rules.

The deadline to file objections expired. No water users filed an objection to the claim.

Conclusions of law

Mr. Mohr’s proposed modification to the maximum number of acres irrigated is a reduction within the parameters of statement of claim 76D 30123427, justifies the modifications to the claim, and resolves the place of use and maximum acres irrigated issue remarks on the claim.

The proposed modification to volume resolves the blank volume identified by prima facie statement of claim 76D 30123427, justifies the modification to the claim, and resolves the volume issue remarks on the claim.

The issue remark noting lack of the claim’s inclusion in the previous Basin 76D decree served its notice purpose.

Recommendations

Domestic claim 76D 30123427 should be modified as follows to accurately reflect historical use.

<u>VOLUME:</u>	BLANK	5.25 AF					
Households:	1						
<u>MAXIMUM ACRES:</u>	5.00	1.50					
 <u>PLACE OF USE:</u>							
	<u>ACRES</u>	<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	1.50 5.00		NWNWNE	19	29N	30W	LINCOLN
TOTAL:	1.50						

The issue remarks 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

Mark M. Mohr
6136 Farm to Market Rd
Libby MT 59923

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

Water Right Number: 76D 30123427 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: MARK M MOHR
6136 FARM TO MARKET RD
LIBBY, MT 59923

Priority Date: AUGUST 17, 1965

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 10.00 GPM

Volume: 5.25 AC-FT

Households: 1

Maximum Acres: 1.50

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		NWNWNE	19	29N	30W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

THE POINT OF DIVERSION IS LOCATED IN TRACT 1JB.

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	1.50		NWNWNE	19	29N	30W	LINCOLN

Total: 1.50

THE PLACE OF USE IS LOCATED IN TRACT 1JB.