

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: Judy Claman-Fantasia; Mike Fantasia

CASE 76D-0598-R-2024

76D 23056-00

76D 23058-00

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

Domestic claim 76D 23056-00 received the following issue remark:

THE CLAIMED MEANS OF DIVERSION CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

Irrigation claim 76D 23058-00 received the following issue remark:

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

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. The issue remarks were not resolved through the objection process. However, there was enough information in the claim files and before the court to resolve the issue remarks.

Issue

Are the issue remarks resolved?

Finding of fact

The Preliminary Decree abstracts for claims 76D 23056-00 and 76D 23058-00 identify their historically accurate elements.

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.

Analysis

The above captioned claims are multiple uses of the same water right. A multiple use of a water right occurs when one water right is used for more than one purpose. The multiple use information remark on the abstracts identifies three claims for three purposes – 76D 23056-00 (domestic), 76D 23057-00 (stock)¹, and 76D 23058-00 (irrigation).

DNRC provided no explanation for adding issue remarks to multiple use claims 76D 23056-00 (domestic) and 76D 23058-00 (irrigation) but not multiple use stock claim 76D 23057-00 - although multiple use stock claim 76D 23057-00 identifies the same means of diversion as domestic claim 76D 23056-00 and the same reservoir as irrigation claim 76D 23058-00.

Conclusion of law

The inconsistent examination of all claims in the multiple use relationship, and the lack of explanation and information in the claim files resulting in the issue remarks on claims 76D 23056-00 and 76D 23058-00, does not outweigh the prima facie proof

¹ Stock claim 76D 23057-00 is not before the court. The Master’s Report includes this claim number only for analysis.

afforded statements of claim 76D 23056-00 and 76D 23058-00. The issue remarks do not present issues that require resolution.

Recommendations

Claims 76D 23056-00 and 76D 23058-00 accurately reflect historical use. No changes to the elements of the claims should be made.

The issue remarks should be removed from the abstracts.

Post Decree Abstracts of Water Right Claim accompany this report to confirm removal of the issue remarks in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Judy Claman-Fantasia
Mike Fantasia
12809 Greene Ave
Los Angeles CA 90066-6409

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

Water Right Number: 76D 23056-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JUDY CLAMAN-FANTASIA
12809 GREENE AVE
LOS ANGELES, CA 90066-6409

MIKE FANTASIA
12809 GREENE AVE
LOS ANGELES, CA 90066-6409

Priority Date: AUGUST 14, 1922

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 26.93 GPM

Volume: 1.50 AC-FT

Households: 1

Maximum Acres: 0.50

Source Name: ELLIOT 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		NWSENW	32	29N	30W	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	0.50		SENWNW	32	29N	30W	LINCOLN

Total: 0.50

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.

23056-00 23057-00 23058-00

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

Water Right Number: 76D 23058-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JUDY CLAMAN-FANTASIA
12809 GREENE AVE
LOS ANGELES, CA 90066-6409

MIKE FANTASIA
12809 GREENE AVE
LOS ANGELES, CA 90066-6409

Priority Date: AUGUST 14, 1922

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FURROW

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 9.20 AC-FT

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 4.50

Source Name: ELLIOT 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		NWSENV	32	29N	30W	LINCOLN

Period of Diversion: MAY 1 TO OCTOBER 15

Diversion Means: HEADGATE

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSENV	32	29N	30W	LINCOLN

Diversion to Reservoir: DIVERSION # 1

Period of Use: MAY 1 TO OCTOBER 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	4.50		SENWNW	32	29N	30W	LINCOLN

Total: 4.50

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.

23056-00

23057-00

23058-00