

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: Candy J. Gelderman; Ralph H. Gelderman

**CASE 76D-0599-R-2024**

76D 215078-00

76D 215079-00

76D 215080-00

**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

Irrigation claim 76D 215078-00, domestic claim 76D 215079-00, and stock claim 76D 215080-00 received the following issue remarks:

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

CLAIM FILED LATE 05/24/96. IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

Irrigation claim 76D 215078-00 received the following additional issue remark:

THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED NOTICE OF APPROPRIATION IS 6/19/1959.

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. DNRC may also add issue remarks providing some sort of notice to water users concerning a 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

1. Are the issue remarks resolved?
2. Should the enforceable priority date for domestic claim 76D 215079-00 be corrected?

### Findings of fact

1. The Preliminary Decree abstracts for claims 76D 215078-00 and 76D 215080-00 identify their historically accurate elements.
2. The enforceable priority date for claim 76D 215079-00 should be corrected.

The enforceable priority date should be **June** 30, 1973.

### **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. A clerical mistake or mistake arising from omission or oversight may be corrected by the court at any time. Rule 60(a), M.R.Civ.P.

6. Late claim fees may be waived by the court. Rule 30, W.R.Adj.R.

### **Analysis**

#### **Issues 1 and 2 – issue remark resolution and clerical correction**

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 215078-00 (irrigation), 76D 215079-00 (domestic), and 76D 215080-00 (stock).

The above captioned claims were filed after the April 30, 1982 claim filing deadline expired. As a result, the claims are defined as “late claims” under § 85-2-102(15), MCA, and were deemed forfeit pursuant to § 85-2-226, MCA. In 1993, the Montana Legislature enacted § 85-2-221(3), MCA, and provided for the remission of forfeiture of late claims, subject to specified terms and conditions. These claims are “remitted” late claims.

The abstracts of each claim appeared with an issue remark citing § 85-2-221(3), MCA, advising water users that the claims may be subordinate, and therefore junior, to certain permits and reservations of water. Persons holding a post-June 30, 1973 permit or reservation, who relied to their detriment on the failure of a claimant to timely file a claim, were required to file an objection and thereby seek the subordination of any remitted late filed claim to their permit or reservation. The claims received an additional issue remark noting they missed the first decree for Basin 76D issued in 1984. This notice issue remark provided notice to water users that the claim was not previously decreed.

Water users were given the opportunity to review the claims and file an objection. The deadline to file objections passed. No water users filed objections against the claims.

The priority date issue remark on irrigation claim 76D 215078-00 does not raise an issue requiring resolution. The priority date claimed by irrigation claim 76D 215078-00 is irrelevant due to the claim’s late claim status. Late claims filed after May 7, 1982, receive an enforceable priority date of June 30, 1973, to comply with the terms and conditions recited by § 85-2-221(3), MCA.

The enforceable priority date for domestic claim 76D 215079-00 should be corrected to June 30, 1973.

### **Conclusion of law**

The priority date issue remark appearing on irrigation claim 76D 215078-00 does not raise an issue that requires resolution.

The late claim and lack of the claim's inclusion in the previous decree issue remarks on each claim served their notice purpose.

Clerical errors may be corrected by the court at any time. The clerical error in the enforceable priority date identified by domestic claim 76D 215079-00 should be corrected.

### **Recommendations**

Claims 76D 215078-00 and 76D 215080-00 accurately reflect historical use. No changes to the elements of the claims should be made.

The enforceable priority date for claim 76D 215079-00 should be corrected as follows.

**Enforceable Priority Date: ~~July~~ June 30, 1973**

The issue remarks should be removed from the abstracts. The late claim fee assessment should be waived as authorized by Rule 30, W.R.Adj.R.

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**

Candy J Gelderman  
Ralph H Gelderman  
PO Box 702  
Eureka MT 59917-0702

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

**Water Right Number:** 76D 215078-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Late Claim:** B

**Owners:** CANDY J GELDERMAN  
PO BOX 702  
EUREKA, MT 59917-0702

RALPH H GELDERMAN  
PO BOX 702  
EUREKA, MT 59917-0702

**Priority Date:** JUNE 9, 1959

**Enforceable Priority Date:** JUNE 30, 1973

CLAIM FILED LATE 05/24/96. AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER

**Flow Rate:** 30.00 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:** 10.00

**Source Name:** SPRING, UNNAMED TRIBUTARY OF SINCLAIR 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		NWNESE	8	36N	26W	LINCOLN

**Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** PUMP

**Period of Use:** APRIL 15 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	4.00		NWNESE	8	36N	26W	LINCOLN
2	4.00		SWNESE	8	36N	26W	LINCOLN
3	2.00		NWSESE	8	36N	26W	LINCOLN

**Total:** 10.00

**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.

215078-00

215079-00

215080-00

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

**Water Right Number:** 76D 215079-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Late Claim:** B

**Owners:** CANDY J GELDERMAN  
PO BOX 702  
EUREKA, MT 59917-0702  
  
RALPH H GELDERMAN  
PO BOX 702  
EUREKA, MT 59917-0702

**Priority Date:** JUNE 9, 1959

**Enforceable Priority Date:** JUNE 30, 1973

CLAIM FILED LATE 05/24/96 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

**Type of Historical Right:** FILED

**Purpose (Use):** DOMESTIC

**Flow Rate:** 30.00 GPM

**Volume:** 1.50 AC-FT

**Households:** 1

**Maximum Acres:** 0.25

**Source Name:** SPRING, UNNAMED TRIBUTARY OF SINCLAIR 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		NWNESE	8	36N	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	0.25		SWSENE	8	36N	26W	LINCOLN

**Total:** 0.25

**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.



215078-00

215079-00

215080-00

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

**Water Right Number:** 76D 215080-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Late Claim:** B

**Owners:** CANDY J GELDERMAN  
PO BOX 702  
EUREKA, MT 59917-0702

RALPH H GELDERMAN  
PO BOX 702  
EUREKA, MT 59917-0702

**Priority Date:** JUNE 9, 1959

**Enforceable Priority Date:** JUNE 30, 1973

CLAIM FILED LATE 05/24/96. AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

**Type of Historical Right:** FILED

**Purpose (Use):** STOCK

**Flow Rate:** 30.00 GPM

**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 SINCLAIR 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		NWNESE	8	36N	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			NWNESE	8	36N	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.

215078-00      215079-00      215080-00