

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

CLAIMANTS: Myrna A. Shilling; Ronald J. Shilling

CASE 76D-0551-R-2024
76D 143750-00

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

Multiple domestic claim 76D 143750-00 appeared in the Preliminary Decree for this Basin with the following issue remark:

THIS CLAIM APPEARS TO BE DUPLICATED BY CERTIFICATE # 76D 50880 00.

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. Claimants completed the issue remark resolution process.

Issue

Is the duplication issue remark resolved?

Findings of fact

1. On April 22, 2024, DNRC filed a Memorandum reporting evidence provided to it resolved the duplication issue remark appearing on multiple domestic claim 76D 143750-00.
2. Multiple domestic statement of claim 76D 143750-00 and groundwater certificate 76D 50880-00 do not duplicate one another.

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. 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

Duplication issue remark resolution

Claimants were ordered to meet with the DNRC to attempt resolution of the duplication issue remark appearing on multiple domestic claim 76D 143750-00. DNRC reviewed the claim file, 1961 and 1979 aerial photos, a topographic map, and a statement and photos provided by Janet Haines, the property manager for claimants. DNRC reported:

- The 1979 aerial photograph shows “multiple structures that are most likely trailers or mobile homes.”
- Statement of claim 76D 143750-00 states the claim serves 20 households.
- A contemporary computer printout of groundwater certificate 76D 50880-00 states that it serves 1 household.
- Property manager Janet Haines confirms there are two wells on claimant’s property. Ms. Haines provided pictures of each well.
- “The well heads appear to be housed in close proximity in the same structure,

one well serving the owners household while the other supplies water to the trailers and mobile homes on the property....”

DNRC concluded that there “are two wells in operation” and recommended removal of the duplication issue remark.

The DNRC Memorandum and its attachments may be viewed on the court’s case management system, FullCourt Enterprise, at document sequence 4.00.

Conclusions of law

Based upon the evidence reviewed by DNRC and DNRC’s discussion and recommendation, the duplication issue remark does not overcome prima facie statement of claim 76D 143750-00. The issue remark should be removed from the abstract.

Recommendations

Multiple domestic claim 76D 143750-00 accurately reflects historical use. No changes to the elements of the claim should be made.¹

The duplication issue remark should be removed from the claim abstract.

A Post Decree Abstract of Water Right Claim accompanies this Report to confirm removal of the issue remark in the state’s centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Myrna A Shilling
Ronald J Shilling
612 NW Backwoods Rd
Moyock NC 27958

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¹ During claims examination DNRC should have modified the type of historical right to “filed” when the priority date was modified to the filing date of the statement of claim. This Report does not correct this clerical error because type of historical right will not appear on the Final Decree abstract for claim 76D 143750-00.

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

Water Right Number: 76D 143750-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MYRNA A SHILLING
612 NW BACKWOODS RD
MOYOCK, NC 27958

RONALD J SHILLING
612 NW BACKWOODS RD
MOYOCK, NC 27958

Priority Date: APRIL 30, 1982

Type of Historical Right: USE

Purpose (Use): MULTIPLE DOMESTIC

Flow Rate: 30.00 GPM

Volume: 35.00 AC-FT

Households: 20

Maximum Acres: 6.00

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		NWNWSW	29	31N	31W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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	6.00		NWNWSW	29	31N	31W	LINCOLN

Total: 6.00