

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: Adella M. Hartle; Wilbur E. Hartle

CASE 76D-0569-R-2024

76D 141282-00

76D 141283-00

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 141282-00 appeared in the Preliminary Decree for this Basin with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DITCH CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

Irrigation claim 76D 141283-00 appeared in the Preliminary Decree for this Basin with the following issue remarks:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

DNRC EXAMINATION WAS UNABLE TO CONFIRM THE USE OF THIS WATER RIGHT. IT APPEARS THIS WATER RIGHT MAY HAVE NOT BEEN PERFECTED.

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. Co-claimant, Adella M. Hartle, completed the issue remark resolution process. **If co-claimant Wilbur E. Hartle does not agree with the recommendations made in this Report, Mr. Hartle should file an objection to the Report.**

Issue

1. What is the historically accurate point of diversion for domestic claim 76D 141282-00, and is the point of diversion issue remark resolved?
2. Should irrigation claim 76D 141283-00 be dismissed due to nonperfection?

Findings of fact

1. On My 13, 2024, DNRC filed a Memorandum concerning co-claimant Adella M. Hartle’s attempt at resolution of the issue remarks. DNRC reported the issue remarks were resolved.
2. An Adella M. Hartle email stated she agreed with the findings of DNRC.

3. The Preliminary Decree abstract for domestic claim 76D 141282-00 identifies the historically accurate point of diversion.

4. Irrigation claim 76D 141283-00 should be dismissed from the adjudication.

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.

5. “‘Existing right’ or ‘existing water right’ means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973.” Section 85-2-102(13), MCA.

Analysis

Issues 1 and 2 - historical point of diversion and point of diversion issue remark resolution domestic claim 76D 141282-00; nonperfection issue remark resolution irrigation claim 76D 141283-00

Claimants were ordered to meet with DNRC to attempt resolution of the point of diversion issue remark appearing on domestic claim 76D 141282-00. DNRC reported it reviewed the claim file, 1979 aerial photos, and Montana Lidar images. DNRC concluded that the claim identified the historically accurate point of diversion legal land description. DNRC explained that the Montana Lidar images show “a clear indentation from the creek to the claimed place use” that “could be the ditch the claimants used to bring water to the claimed place of use...This ditch is within the legal description of the claimed point of diversion and place of use appears to have a small outline that may be the site of the claimed 1944 cabin.”

Claimants were ordered to meet with DNRC to attempt resolution of the nonperfection issue remark appearing on irrigation claim 76D 141283-00. DNRC reported it reviewed the claim file and 1979 aerial photos. DNRC concluded that irrigation claim 76D 141283-00 historically irrigated zero acres and should be dismissed.

Co-claimant Adella M. Hartle agreed with the DNRC’s analysis and recommendations.

The DNRC Memorandum and its attachments may be viewed on the court’s case management system, FullCourt Enterprise, at document sequence 2.00.

Conclusions of law

Based upon the DNRC’s discussion and Adella M. Hartle’s agreement, the point of diversion issue remark does not overcome prima facie statement of claim 76D 141282-00. The issue remark should be removed from the abstract.

Based upon the DNRC’s discussion and Adella M. Hartle’s agreement, irrigation claim 76D 141283-00 should be dismissed due to nonperfection.

Recommendations

Domestic claim 76D 141282-00 accurately reflects historical use. No changes to the elements of the claim should be made.

The point of diversion issue remark should be removed from the abstract of domestic claim 76D 141282-00.

Irrigation claim 76D 141283-00 should be dismissed.

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

Adella M Hartle
Wilbur E Hartle
259 ~~245~~ Swede Gulch Dr
Libby MT 59923-8840

Service List Updated 5/22/2024

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

Water Right Number: 76D 141282-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ADELLA M HARTLE
259 SWEDE GULCH DR.
LIBBY, MT 59923-8840

WILBUR E HARTLE
259 SWEDE GULCH DR
LIBBY, MT 59923-8840

Priority Date: APRIL 17, 1944

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 30.00 GPM

Volume: 4.20 AC-FT

Households: 1

Maximum Acres: 2.00

Source Name: KEELER 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		SESENW	19	30N	33W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DITCH

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	2.00		SESENW	19	30N	33W	LINCOLN

Total: 2.00

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

Water Right Number: 76D 141283-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: ADELLA M HARTLE
259 SWEDE GULCH DR.
LIBBY, MT 59923-8840

WILBUR E HARTLE
259 SWEDE GULCH DR
LIBBY, MT 59923-8840

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: KEELER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.