

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: Christina Law-Brandos; Scott Brandos

CASE 76D-0579-R-2024
76D 133394-00

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 133394-00 appeared in the Preliminary Decree for this Basin with an issue remark concerning point of diversion.

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. Christina Law-Brandos and Scott Brandos completed the issue remark resolution process.

Issues

1. What is the historically accurate point of diversion?
2. Is the point of diversion issue remark resolved?

Findings of fact

1. On May 20, 2024, the DNRC filed a Memorandum concerning Christina Law-Brandos and Scott Brandos attempt at resolution of the issue remark.

2. Included with the DNRC Memorandum were the Affidavit of Christina Law-Brandos and Scott Brandos, maps, and aerial photos.

3. The DNRC reported Christina Law-Brandos and Scott Brandos resolved the point of diversion issue remark.

4. The Preliminary Decree abstract identifies the historically accurate point of diversion.

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. 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. 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.

5. 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

Issues 1 and 2 – point of diversion and point of diversion issue remark resolution

DNRC reviewed the claim file, the Lincoln County Water Resources Survey published in 1965, Water Resources Survey field notes on a 1961 aerial photo, a 1979 aerial photo, and visited with claimants Christina Law-Brandos and Scott Brandos. Christina Law-Brandos and Scott Brandos prepared an affidavit and a map and provided the affidavit and the map to DNRC. Christina Law-Brandos and Scott Brandos confirmed the historical accuracy of the prima facie point of diversion identified by the statement of claim. DNRC recommended removal of the point of diversion issue remark.

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

Conclusion of law

Claimants Christina Law-Brandos and Scott Brandos confirmed the accuracy of the prima facie point of diversion identified by statement of claim 76D 133394-00, thereby resolving the point of diversion issue remark.

Recommendations

Irrigation claim 76D 133394-00 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 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

Christina Law-Brandos
Scott Brandos
1136 Slick Gulch Rd
Rexford MT 59930-9494
PO Box 1655
Eureka MT 59917
(Returned Mail Received 2/23/2024)

Service List Updated 5/29/2024

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

Water Right Number: 76D 133394-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SCOTT BRANDOS
1136 SLICK GULCH ROAD
REXFORD, MT 59930

CHRISTINA LAW-BRANDOS
1136 SLICK GULCH ROAD
REXFORD, MT 59930

Priority Date: JUNE 3, 1911

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FURROW

Flow Rate: 150.00 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: 40.00

Source Name: SLICK GULCH

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		SWNWSE	9	35N	27W	LINCOLN

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

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	11.00		NWSE	9	35N	27W	LINCOLN
2	2.00		SWSWNE	9	35N	27W	LINCOLN
3	8.00		N2NESW	9	35N	27W	LINCOLN
4	4.00		SESWNW	9	35N	27W	LINCOLN
5	15.00		S2SENW	9	35N	27W	LINCOLN

Total: 40.00