

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: ~~Susan H. Roggenkamp; Carroll H. Michaels,~~
~~Lowkap LLC~~ **Carolyn Yoder; Andy R.**
Yoder

CASE 76D-0585-R-2024
76D 140783-00
76D 140785-00
76D 140786-00

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

Each of the above captioned claims 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 HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

Claim 76D 140785-00 received an additional remark stating:

ON OCTOBER 2, 1984, RICHARD LA CHAPPELLE FILED A LATE OBJECTION TO THE PURPOSE, FLOW RATE, VOLUME, PLACE OF USE, AND MAXIMUM ACRES IRRIGATED. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

Issue remarks most often 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. The court may also add issue remarks, typically providing some sort of notice to water users concerning a claim. Montana law requires the Water Court to resolve issue remarks.

On May 9, 2024, DNRC processed an Ownership Update transferring the entire ownership interest in the above captioned claims from Susan H. Roggenkamp, Carroll H. Michaels, and Lowkap LLC to Carolyn Yoder and Andy R. Yoder. The caption and service list reflect this update. **If the new claimants, Carolyn Yoder and Andy R. Yoder, disagree with the recommendations made in this Master's Report, they should object to this report.**

Issue

Are the issue remarks resolved?

Findings of fact

1. The issue remarks on the claims are resolved.
2. The Preliminary Decree abstracts identify the historically accurate elements for each claim.

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

Issue remark resolution

The claims in this case are multiple uses. Multiple uses of a water right occur when one water right is used for more than one purpose. For example, the water rights identified by these claims are used for irrigation, mining, and domestic purposes.

The DNRC claims examiner failed to provide any information supporting the placement of the point of diversion issue remark on the claims. The point of diversion issue remark does not overcome the prima facie statements of claim.

On October 2, 1984, Richard La Chappelle filed a late objection to claim 76D

140785-00. The Court added an issue remark to the claim noting the late objection. The remark provided notice to claimants and other water users of their opportunity to review the claim and file an objection. The deadline to file objections passed. No water users filed an objection against the claim.

An order provided Richard La Chappelle the opportunity to file a written statement with the Court indicating his intent to participate in the proceedings concerning the claim. The order stated Richard La Chappelle's failure to comply with the deadline would indicate his non-participation in these proceedings and result in his dismissal from this case. Richard La Chappelle did not file a statement with the court. Richard La Chappelle was dismissed from the case.

An order provided claimants the opportunity to file a written statement with the court assuming the late objection if they wished. The order stated claimants' failure to comply with the deadline would indicate they did not wish to assume the late objection and would result in the dismissal of the late objection. Claimants did not file a statement with the court.

Conclusions of law

The point of diversion issue remark does not overcome the above captioned prima facie statements of claim. The issue remark should be removed from the abstracts.

The issue remark on claim 76D 140785-00 noting Richard La Chappelle's late objection to the claim served its notice purpose.

Recommendations

The above captioned claims accurately reflect historical use. No changes to the elements of the claims should be made.

The issue remarks should be removed from the claim 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

**Carolyn Yoder
Andy R Yoder
105 Mountain Lion Dr
Rexford MT 59930-9793**

Last Order:

**Susan H Roggenkamp
Carroll H Michaels
Lowkap LLC
12709 Woodward St
Overland KS 66213-2790**

Service List Updated 5/21/2024

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

Water Right Number: 76D 140783-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ANDY R YODER
105 MOUNTAIN LION DRIVE
REXFORD, MT 59930-9793

CAROLYN YODER
105 MOUNTAIN LION DRIVE
REXFORD, MT 59930-9793

Priority Date: APRIL 20, 1911

Type of Historical Right: FILED

Purpose (Use): MINING

***Flow Rate:** 134.60 GPM

***Volume:** 217.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: IRON 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		SWNWNW	35	31N	34W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

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			NWSENW	35	31N	34W	LINCOLN
2			SWSENW	35	31N	34W	LINCOLN
3			NESENW	35	31N	34W	LINCOLN
4			SESENW	35	31N	34W	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.

140783-00 140785-00 140786-00

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

Water Right Number: 76D 140785-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ANDY R YODER
105 MOUNTAIN LION DRIVE
REXFORD, MT 59930-9793

CAROLYN YODER
105 MOUNTAIN LION DRIVE
REXFORD, MT 59930-9793

Priority Date: APRIL 20, 1911

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 49.37 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: 3.00

Source Name: IRON 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		SWNWNW	35	31N	34W	LINCOLN

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: MAY 1 TO OCTOBER 1

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		NWSENW	35	31N	34W	LINCOLN
2	1.00		NESWNW	35	31N	34W	LINCOLN
Total:	3.00						

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.

140783-00 140785-00 140786-00

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

Water Right Number: 76D 140786-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ANDY R YODER
105 MOUNTAIN LION DRIVE
REXFORD, MT 59930-9793

CAROLYN YODER
105 MOUNTAIN LION DRIVE
REXFORD, MT 59930-9793

Priority Date: APRIL 20, 1911

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 26.93 GPM

Volume: 14.00 AC-FT

Households: 14

Source Name: IRON 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		SWNWNW	35	31N	34W	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			SENW	35	31N	34W	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.

140783-00 140785-00 140786-00