

Montana Water Court
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FILED
09/18/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
76K-6002-A-2024
Nordlund, Julia
2.00

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
SWAN RIVER BASIN (76K)

* * * * *

CLAIMANT: United States of America (Dept. of Agriculture
Forest Service)

CASE 76K-6002-A-2024
76K 51699-00

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

On August 8, 2024, Jim Ferch of the DNRC submitted a Motion to Amend claim 76K 51699-00. He forwarded the Motion from Abe Moore who currently leases the water right from the United States of America Forest Service. Mr. Moore attached a statement from Chis Dowling, who is an employee of the Forest Service, which echoes Mr. Moore's request. The purpose of the Motion to Amend is to change the means of diversion from bucket to pump.

FINDINGS OF FACT

1. The original Statement of Claim for 76K 51699-00 did not clarify a means of diversion. During the examination for this claim during the Temporary Preliminary Decree, it appears DNRC added "bucket" as the means of diversion.

2. Mr. Moore and Mr. Dowling state the method of diversion has been pump dating back to before 1973 as electricity was supplied to the area before that time. Furthermore, Mr. Moore attached a letter dated September 26, 1971, which discusses the installation of a septic tank on the property. The septic tank and installation of plumbing in the cabin would require a pump rather than a bucket as a means of diversion for the water right.

3. The change to the means of diversion would neither result in an expansion of the water right nor negatively impact anyone other than Claimant as there is no request to increase the amount of water being diverted. Thus, the Motion results in no need for notice pursuant to Section 85-2-233(6), MCA.

4. There is an issue remark on claim 76K 51699-00 which questions the flow rate and volume due to the means of diversion as a bucket. With the change to a pump, this issue remark is no longer relevant and should be removed.

CONCLUSIONS 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 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. Pursuant to § 85-2-227(2), MCA:

A water judge may consider all relevant evidence in the determination and interpretation of existing water rights. Relevant evidence under this part may include admissible evidence arising before or after July 1, 1973.

4. The evidence entered into the record is sufficient to support making the correction above.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified above to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm that the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

United States of America
(Dept of Agriculture Forest Service)
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Service via USPS Mail:

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Abe Moore
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WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
SWAN RIVER
BASIN 76K

Water Right Number: 76K 51699-00 STATEMENT OF CLAIM

Version: 2 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date: APRIL 1, 1948

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 4.49 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name HOLLAND 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		NENESE	35	20N	16W	MISSOULA

Period of Diversion: FEBRUARY 1 TO NOVEMBER 30

Diversion Means: PUMP

Period of Use: FEBRUARY 1 TO NOVEMBER 30

***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			NENESE	35	20N	16W	MISSOULA

Remarks:

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.