

Montana Water Court
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FILED
03/10/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
76HE-0305-P-2025
Lockman, Melissa
1.00

**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER CLARK FORK DIVISION
SOUTH END OF THE BITTERROOT RIVER SUBBASIN (76HE)**

* * * * *

CLAIMANT: Nickolas A. Peirano Trust

CASE 76HE-0305-P-2025
76H 114599-00

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

FINDINGS OF FACT

1. Claim 76H 114599-00 appeared in the Temporary Preliminary Decree for the Bitterroot River, South End (76HE) issued on May 25, 1994.

2. At the time the claim was examined (in the early 1990s) by the Department of Natural Resources and Conservation (DNRC), the DNRC found that ownership in the water rights database was not consistent with ownership of the underlying place of use.

3. To note the inconsistency, the DNRC placed the following issue remark on the claim:

AS OF 03/06/91, THIS WATER RIGHT APPEARS TO BE OWNED BY NICK PEIRANO, 3299 OLD DARBY RD, DARBY, MT 59829.

4. When the 76HE Temporary Preliminary Decree was issued, the record owners of claim 76H 114599-00 was Alexander J. McDonald.

5. According to the water rights database, Mr. McDonald transferred his ownership of claim 76H 114599-00 to the Nickolas A. Peirano Trust in 2008.

6. The Trust is the current owner of claim 76H 114599-00 in the water rights database. The Trust is also the sole owner of the underlying place of use.

7. Based on this information, it appears the ownership issue remark is outdated and should be removed from the claim without changes to the claim's ownership. If ownership is correct, no further action is needed. If ownership is not correct, Mr. Peirano should object to this Master's Report and notify the Court of the current ownership.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the 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. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

CONCLUSION OF LAW

1. The ownership issue remark does not overcome the prima facie status of claim 76H 114599-00. Based on the evidence before the Court, the ownership issue remark is outdated and the ownership of claim 76H 114599-00 is current.

RECOMMENDATION

1. The ownership issue remark should be removed from claim 76H 114599-00.

A post decree abstract of the water right claim reflecting this recommendation is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

SERVICE VIA USPS MAIL

Nickolas A Peirano Trust
3287 Old Darby Rd
Darby, MT 59829

Potential Owner

Sally Blevins
Nez Perce Rd
Darby, MT 59829

SERVICE VIA ELECTRONIC MAIL

Garrett Musso
MT DNRC Post Exam &
Distribution Program Supervisor
garrett.musso2@mt.gov

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SOUTH END SUBBASIN- BITTERROOT RIVER
BASIN 76H

Water Right Number: 76H 114599-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: PEIRANO, NICKOLAS A TRUST
3287 OLD DARBY RD
DARBY, MT 59829

Priority Date: MAY 1, 1936

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 76.50 GPM

THE FLOW RATE OF THIS WATER RIGHT HAS BEEN REDUCED TO THE 17 GPM PER ACRE GUIDELINE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.

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: 4.50

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		NWNWNW	11	3N	21W	RAVALLI

Period of Diversion: MAY 1 TO OCTOBER 4

Diversion Means: WELL

Period of Use: MAY 1 TO OCTOBER 4

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	4.50		NWNWNW	11	3N	21W	RAVALLI

Total: 4.50

Remarks:

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