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MONTANA WATER COURT  
CLARK FORK DIVISION  
KOOTENAI RIVER BASIN  
BASIN 76D  
PRELIMINARY DECREE

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CLAIMANT: Glenn L. Garrison

OBJECTORS: Glenn L. Garrison; Maria C. Stephenson

NOTICE OF INTENT TO APPEAR: Betty J. Jamison;  
Cynthia M. Holcomb

**CASE 76D-0233-R-2023**  
76D 1029-00

**ORDER ADOPTING MASTER’S REPORT AND CLOSING CASE**

On December 17, 2025, a Master’s Report was issued in this case. (Doc. 56.00).<sup>1</sup> Objector Maria C. Stephenson (“Stephenson”) filed an Objection to the Master’s Report. (Doc. 59.00). This Order addresses Stephenson’s objection to the Master’s Report.

**BACKGROUND**

Claim 76D 1029-00 was included in the Preliminary Decree for the Kootenai River Basin 76D. The claim is for domestic use from a small surface channel, Spring, Unnamed Tributary of Callahan Creek. Stephenson filed an Objection to claim 76D 1029-00 in the Preliminary Decree. Claimant Glenn L. Garrison (“Garrison”) filed a self-objection to the claim. Betty J. Jamison and Cynthia Holcomb filed notices of intent to appear.

This case was consolidated to address the objections and notices of intent to appear. (Doc. 1.00). The Senior Water Master assigned to this case held a hearing on

<sup>1</sup> “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

June 23-24, 2025 in Troy City Court, Troy, Montana. (Doc. 56.00). The issues at hearing addressed the location of the point of diversion, the proper source, and whether the source should be categorized as surface water or groundwater. (Doc. 56.00). After the hearing, the Water Master conducted a site visit to view water features and conveyances analyzed by each party's expert witness. (Doc. 56.00).

On December 17, 2025, the Water Master issued a Master's Report with Findings of Fact and Conclusions of Law. (Doc. 56.00). The Master determined claim 76D 1029-00 was a surface water claim with two points of diversion located in the SWNWNE and SESWNWNE of Section 24, Township 31 North, Range 34 West, Lincoln County. (Doc. 56.00, Recommendations). The Water Master stated she found Garrison's testimony as well as Garrison's expert, Mikel Siemens ("Siemens") of Core Water Consulting, LLC, "more credible" than Stephenson and Stephenson's expert, Brad Bennett ("Bennett") of Water & Environment Technologies. (Doc. 56.00, FOF No. 1-2).

On January 14, 2026, Stephenson filed an Objection to the Master's Report and requested a hearing. (Doc. 59.00). First, Stephenson objects to the Water Master's finding that Stephenson's testimony was "not relevant." Second, Stephenson objects to the finding that claim 76D 1029-00 includes a man-made or "excavated" ditch and point of diversion in the SESWNWNE of Section 24, Township 31 North, Range 34 West. (Doc. 59.00).

A status conference was held to determine proceedings to address the Objection to the Master's Report. As a result of the conference, an oral argument on the Objection to the Master's Report was set. (Doc. 64.00). Oral Argument was held on March 24, 2026.

### **ISSUES**

1. *Did the Water Master err in determining Stephenson's testimony was not relevant?*
2. *Did the Water Master err in finding a point of diversion and man-made "excavated" ditch on Stephenson's property?*

### **STANDARD OF REVIEW**

The Water Court reviews a Water Master's findings of fact for clear error and the Water Master's conclusions of law for correctness. *Klamert v. Iverson*, 2019 MT 110, ¶

11, 395 Mont. 420, 443 P.3d 379 (citing *Skelton Ranch, Inc. v. Pondera Cnty. Canal & Reservoir Co.*, 2014 MT 167, ¶ 25, 375 Mont. 327, 328 P.3d 644).

“Findings of fact are clearly erroneous if (1) substantial evidence does not support the findings of fact; (2) the fact-finder misapprehended the effect of the evidence; or (3) a review of the record leaves the court with the ‘definite and firm conviction that a mistake has been committed.’” *In re Quigley*, 2017 MT 278, ¶ 10, 389 Mont. 283, 405 P.3d 627; *Skelton*, ¶ 27. In reviewing a Water Master’s factual findings, the Water Court cannot simply substitute its judgment for that of the Water Master’s. *Id.*

In reviewing the Master's conclusions of law, the standard of review is plenary, and the Water Court determines whether the Master’s conclusions are correct as a matter of law. *Heavirland v. State*, 2013 MT 313, ¶ 14, 372 Mont. 300, 311 P.3d 813 (citing *Geil v. Missoula Irrigation Dist.*, 2002 MT 269, ¶ 22, 312 Mont. 320, 59 P.3d 398). Based on these standards of review, the Court may adopt, modify, or reject the report, in whole or in part, or may receive further evidence and recommit it with instructions. M. R. Civ. P. 53(e)(2); Rule 23, W.R.Adj.R.

## DISCUSSION

1. *Did the Water Master err in determining Stephenson’s testimony was “not relevant?”*

Claim 76D 1029-00 includes both a point of diversion and place of use in Section 24, Township 31 North, Range 34 West, Lincoln County. Garrison’s family has owned property in the NE of Section 24 since 1958. (Doc. 56.00, FOF No. 5). Garrison currently owns the property that includes the place of use for claim 76D 1029-00. *Id.* In 2021, Stephenson acquired a parcel that abuts Garrison’s property to the south. *Id.*

Finding of Fact No. 1 of the Master’s Report states:

The court finds the testimony and evidence provided by claimant/objector Glenn L. Garrison more credible than the testimony provided by objector Maria Stephenson.

Mr. Garrison possesses six decades of personal pre- and post-1973 knowledge of both the property and the water at issue in this case, while Ms. Stephenson recently moved to the area in 2021. Due to Ms. Stephenson’s recent acquisition of her property, Ms. Stephenson’s testimony does not address the historical pre-July 1, 1973 beneficial

use of claim 76D 1029-00. The court finds that the testimony provided by Ms. Stephenson is not relevant.

(Doc. 56.00, FOF No. 1). Stephenson asserts the Master erred in finding Stephenson's testimony "not relevant."

Although Finding of Fact No. 1 initially states the Master found Garrison's testimony more credible than Stephenson's, the finding also states the Master found Stephenson's testimony not relevant. A determination of credibility requires an evaluation of the trustworthiness and accuracy of a witness while relevance is governed by the rules of evidence. Relevant evidence has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." M.R.Evid. 401.

The Master's use of the term "relevant" appears to be a misstatement. However, the misstatement was a harmless error. The court "disregards errors and defects that do not affect any party's substantial rights." M.R.Evid. 61.

At hearing, Stephenson was allowed to testify. The record reflects that testimony by Stephenson was not excluded and was considered by the Master. However, for the reasons stated in Finding of Fact No. 1, the Master found Garrison's testimony more credible.

In non-jury trials, it is the duty and function of the Water Master to resolve conflicts in evidence. *In re Martinell*, 2018 Mont. Water LEXIS 3, \*19 (citing *Swain v. Battershell*, 1999 MT 101, ¶ 39, 294 Mont. 282, 983 P.2d 873). The Water Court will not substitute its judgment regarding the credibility of witnesses or re-weigh the evidence so long as a Water Master's findings are supported by substantial evidence.

Here, the evidence reflects that Garrison is sixty-nine years old and has lived on the property his whole life. (Doc. 56.00, FOF No. 5). Garrison's grandmother, Selma Garrison, filed the original statement of claim for 76D 1029-00. *Id.* at FOF No. 4. Garrison currently owns several portions of the property, including the place of use of claim 76D 1029-00. *Id.* at FOF No. 5. Beginning when he was six or seven years old, Garrison helped his family with the conveyance system. *Id.* at FOF No. 6. Stephenson does not have any personal pre-1973 knowledge of water use associated with claim 76D

1029-00; she acquired the property in 2021. *Id.* at FOF No. 1, 5. Both Garrison and Stephenson were allowed to testify at trial and after hearing the testimony, the Water Master determined Garrison was more credible than Stephenson.

Regardless of her misuse of the term “relevant,” the Water Master’s findings, including the finding that Garrison’s testimony was more credible than Stephenson’s testimony, are supported by substantial evidence. This Court will not re-weigh the evidence or credibility of witnesses. Therefore, any error in the use of the term relevant was harmless.

2. *Did the Water Master err in finding a point of diversion and man-made “excavated” ditch?*

Based on testimony by both Garrison and his expert Siemens, the Water Master found that the surface channel serving claim 76D 1029-00 is intercepted by an excavated ditch. (Doc. 56.00, FOF No. 3(b), (d), 9). The reason water is ultimately able to be collected in a pipeline on Garrison’s property is “because of the upgradient primary point of diversion in the SESWNENW of Section 24, Township 31 North, Range 34 West.” *Id.* at FOF No. 3(g)). The Water Master concluded, “based on the totality of the factual record, including this Master’s observations during the site visit” that the conveyance system for 76D 1029-00 includes a ditch and a point of diversion in the SESWNENW of Section 24.” *Id.* at COL 3 & Recommendations.

Stephenson objects to the Water Master’s characterization of the point of diversion and “excavated” ditch on her property. Further, Stephenson asserts the Court should reject the conclusion that there is a small ditch and a point of diversion in the SESWNENE of Section 24. Stephenson requests the Court determine there is no ditch and no point of diversion in the SESWNENW of Section 24.

At trial, there was conflicting evidence over the existence of the ditch. Both parties had expert witnesses. Garrison’s expert Siemens concluded there were multiple spring sources that contributed to the claim and a ditch on Stephenson’s property. According to Siemens’ testimony, as well as Garrison’s testimony, a ditch directs water between what was referred to as Points B and D on Garrison’s exhibits 23 and 35. Maintenance of the ditch consisted of using hand tools to clear out sticks and leaves. *Id.*

at FOF No. 7. The purpose of the ditch is to direct water and prevent it from flowing down a gully away from the place of use. *Id.* at FOF No. 9.<sup>2</sup> Stephenson's expert, Bennett, reviewed springs originating on Stephenson's property and did not make any conclusions concerning man-made ditches associated with 76D 1029-00. After listening to the testimony and seeing the site herself, the Water Master ultimately found Siemens' and Garrison's testimony more persuasive and found there was a man-made ditch on Stephenson's property that was part of the conveyance of claim 76D 1029-00.

As with issue one addressed in this order, Stephenson asks the Court to substitute its judgment for that of the Water Master. As previously stated, it is the Water Master's role to resolve conflicts in evidence. *Martinell*, \*19. The Court will not substitute its judgment so long as the Water Master's findings are supported by substantial evidence, the Water Master did not misapprehend the effect of the evidence, and review of the record leaves the court with a firm conviction no mistake was made. *Quigley*, ¶ 10.

Here, the Water Master's findings were supported by substantial evidence and there is no error in the finding of fact concerning the excavated ditch. The Water Master's conclusions were properly based on the evidence presented at hearing and her observations during the site visit. Therefore, the conclusions of law are correct.

### **CONCLUSION AND ORDER**

Based on the standard of review, the Court may adopt, modify, or reject the Report in whole or in part or may receive further evidence and recommit it with instructions. Rule 53(e)(2), M. R. Civ. P.; Rule 23 W.R.Adj.R. The Water Master's findings are supported by substantial evidence. The conclusions and recommendations made in the Report are correct.

Therefore, it is

ORDERED that the Master's Report is ADOPTED. Proceedings in this case are CLOSED.

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<sup>2</sup> Part of Stephenson's concern appears to stem from the use of the term "excavated." Testimony reflected the ditch was difficult to see and that only hand tools were used to clear the ditch. For clarity, in this case, the term "excavated" was not used to reference equipment such as an excavator. The term was simply used as another way of describing a man-made conveyance.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

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