

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
(406) 586-4364  
1-800-624-3270  
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK DIVISION  
KOOTENAI RIVER BASIN (76D)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANTS: Rita A. Purdy; Joseph L. Purdy

**CASE 76D-0515-R-2023**

76D 14215-00

76D 30128803

**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 to 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 14215-00 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.

Domestic claim 76D 30128803 appeared in the Preliminary Decree for this Basin with the following issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 76D DECREE ISSUED 3/22/1984.

THE CLAIMED DOMESTIC USE COULD NOT BE IDENTIFIED FROM DATA SUBMITTED WITH THE CLAIM.

DNRC EXAMINATION WAS UNABLE TO CONFIRM THE USE OF THIS WATER RIGHT. IT APPEARS THIS WATER RIGHT MAY HAVE NOT BEEN PERFECTED.

THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED NOTICE OF APPROPRIATION IS 6/28/1973.

A SURFACE WATER NOTICE OF APPROPRIATION WAS SUBMITTED TO SUPPORT THIS CLAIM TO GROUNDWATER APPROPRIATED BETWEEN JANUARY 1, 1962 AND JULY 1, 1973.

THE CLAIMED SOURCE MAY BE QUESTIONABLE. BASED ON AVAILABLE DATA, THE SOURCE MAY BE SURFACE WATER FROM AN UNDEVELOPED SPRING.

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. Co claimant Joseph L. Purdy completed the issue remark resolution process. **If co-claimant Rita A. Purdy disagrees with the recommendations made in this report, she should file an objection to the report.**

### Issue

Are the issue remarks resolved?

## **Findings of fact**

1. On December 6, 2023, DNRC filed a Memorandum concerning Joseph L. Purdy's attempt at resolution of the issue remarks. DNRC reported the issue remarks were resolved.

2. A preponderance of evidence establishes the historically accurate point of diversion and place of use legal land descriptions for domestic claim 76D 30128803 are:

- Point of diversion: N2SENW of Section 24, Township 36 North, Range 27 West, Lincoln County
- Place of use: SWNENW of Section 24, Township 36 North, Range 27 West, Lincoln County.

## **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. A properly filed Statement of Claim for Existing Water Right exempt use is prima facie proof of its content. Section 85-2-222(3), 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. If the settlement agreement expands or enlarges an element of a claim, the

burden of proof must be met. If evidence does not meet the burden of proof, the element shall not be expanded or enlarged. Rule 17(b), W.R.Adj.R.

5. The Montana Water Court may accept a settlement agreement that reduces or limits an element of a claim and need not determine whether the burden of proof is met unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

6. 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.

7. 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.

8. 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.

9. Section 89-810, RCM (1947) (repealed 1973), outlined the process for obtaining a filed water right. The appropriator was required to post a notice of their intent to appropriate the water at the intended point of diversion. Within twenty days of the date of appropriation, the appropriator was required to file a notice of appropriation with the county clerk. If the appropriator failed to comply with the requirements of Section 89-810, they could not relate their priority date back to the posting of the notice of intent to appropriate water. Section 89-812, RCM (1947) (repealed 1973). Properly filed notices of appropriation were *prima facie* evidence of the statements made therein. Section 89-814, RCM (1947) (repealed 1973).

This statutory framework did not mandate the forfeiture of a water right or the inadmissibility of a notice of appropriation as evidence of a water right if the statutory framework was not followed. *Foss v. U. S. Dep't. of Agriculture Forest Service*, Case 76HF-580 at p.8-9, (MT Water Court Order Amending and Adopting Master's Report as

Amended for Claims 76H 105034-00 and 76H 105055-00 Regarding Admissibility of Notices of Appropriation Jun. 4, 2013).

The current rules of evidence should apply to the introduction of filed notices of appropriation that do not comply with the filing provisions of section 89-810. *Foss v. U. S. Dep't. of Agriculture Forest Service*, 2013 Mont. Water LEXIS 17 at \*6 (Jan. 31, 2013).

[T]he foregoing is [not] meant to suggest all notices of appropriation are essential for the adjudication of water rights, or that all notices are admissible simply because they are old. Many notices lack specific information regarding historic water usage, or they conflict with other evidence, or they grossly overstate the extent of historic beneficial use. These defects may render a notice valueless, but this pertains to the weight and credibility of the notice rather than its admissibility.

Where, as here, the notice's only deficiency is its filing date, there is simply no reason to automatically reject such a notice as inadmissible. This notice should be treated as any other prospective exhibit with its admission governed by the current rules of evidence. If admitted, its weight and ultimate value should be measured like any other document before the Court.

*Foss*, 2013 Mont. Water LEXIS 17 at \*\*28-29.

## **Analysis**

### **Issue remark resolution**

DNRC reviewed the claim files, a 1979 aerial photo, a 2013 topographical map, visited with Mr. Purdy, and received emails and evidence from Mr. Purdy.

Mr. Purdy emailed DNRC on September 26, 2023. Mr. Purdy confirmed the point of diversion identified by prima facie statement of claim 76D 14215-00, and the Preliminary Decree abstract, is historically accurate. DNRC reported that the headgate appears to be in the trees and the "topography appears to feasibly accommodate water from a ditch to the place of use." DNRC concluded that the point of diversion identified by the Preliminary Decree abstract is consistent with historical use and recommended removal of the point of diversion issue remark.

Mr. Purdy provided evidence to DNRC that the property identified by domestic claim 76D 30128803 was homesteaded by the Purdy family around the turn of the

century, four generations ago. The Purdy family operated a dairy farm, and milk from the dairy was sold as early as 1908. DNRC reviewed Montana property records on the Montana Cadastral database noting the records state the house was built in 1913. DNRC reported that, “Use of this spring to supply the dwelling appears to be feasible with water moving through a pipeline to the house.” DNRC’s review of the 1979 aerial photo confirms the claimed point of diversion and place of use legal land descriptions are incorrect and that Mr. Purdy’s proposed modifications to the point of diversion and place of use legal land descriptions are historically accurate. Based upon the foregoing, DNRC concluded the claim was perfected for domestic use and recommended removal of the nonperfection and questionable domestic use issue remarks.

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

Based upon a review of the claim files, David Dale Purdy and Marie C. Purdy filed a notice of appropriation on June 29, 1973, for 4.00 miner’s inches (44.88 GPM) of an unnamed spring. The notice stated the water was appropriated from the unnamed spring by pipeline on March 15, 1950, for multiple uses including household and domestic use. Although not timely filed, the notice of appropriation, taken together with the history provided by Mr. Purdy provides sufficient evidentiary support that the water was put to beneficial use by the claimed priority date of March 15, 1950. The issue remarks concerning source type (surface water v. groundwater) and type of filing were added in error. The claim is for groundwater based upon the means of diversion – a pipeline – and the source – a spring. The claimed priority date is 1950, before the requirement for a groundwater filing for use between January 1, 1962 and July 1, 1973. The issue remarks concerning priority date, the type of filing made in support of the claim, and source type (surface water v. groundwater) are resolved.

The claim appeared in the Preliminary Decree with the following issue remark:  
THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 76D DECREE ISSUED 03/22/1984.

Water users were given the opportunity to review the claim and file an objection. The deadline to file objections expired. No water users filed an objection to the claim.

**Conclusions of law**

Based upon the DNRC’s discussion and Mr. Purdy’s email confirming the accuracy of prima facie statement of claim 76D 14215-00, the Preliminary Decree abstract for irrigation claim 76D 14215-00 identifies the historically accurate point of diversion. The point of diversion issue remark is resolved.

Mr. Purdy’s evidence for domestic claim 76D 30128803 either confirms the historical accuracy of the prima facie statement of claim or where necessary overcomes by a preponderance of evidence the prima facie proof afforded the statement of claim, justifies the modifications to the claim, and resolves the purpose, priority date, source, and nonperfection issue remarks on the claim. The issue remark noting lack of the claim’s inclusion in the previous Basin 76D decree served its notice purpose.

**Recommendations**

Irrigation claim 76D 14215-00 accurately reflects historical use. No changes to the elements of the claim should be made.

Domestic claim 76D 30128803 should be modified as follows to accurately reflect historical use.

**POINT OF DIVERSION:**

<u>ACRES</u>	<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	N2SENW	NENESW	24	36N	27W	LINCOLN

**PLACE OF USE:**

	<u>ACRES</u>	<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	0.25	SWNENW	NENESW	24	36N	27W	LINCOLN
TOTAL:	0.25						

The issue remarks should be removed from the claim abstracts.

Post Decree Abstracts of Water Right Claim accompany this report to confirm implementation of the recommendations in the state’s centralized water right record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail**

Rita A Purdy  
Joseph L Purdy  
390 Purdy Dr  
Eureka, MT 59917-9492



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

**Water Right Number:** 76D 14215-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** RITA A PURDY  
390 PURDY DR  
EUREKA, MT 59917 9492  
  
JOSEPH L PURDY  
390 PURDY DR  
EUREKA, MT 59917 9492

**Priority Date:** JULY 10, 1919

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 1.44 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 38.00

**Source Name:** CAYUSE 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		N2NENE	24	33N	27W	LINCOLN

**Period of Diversion:** MAY 15 TO OCTOBER 1

**Diversion Means:** HEADGATE

**Period of Use:** MAY 15 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	3.00		SESWNE	24	33N	27W	LINCOLN
2	5.00		E2NESW	24	33N	27W	LINCOLN
3	25.00		NWSE	24	33N	27W	LINCOLN
4	5.00	3	W2NESE	24	33N	27W	LINCOLN

**Total:** 38.00

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

**Water Right Number:** 76D 30128803 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** RITA A PURDY  
390 PURDY DR  
EUREKA, MT 59917 9492

JOSEPH L PURDY  
390 PURDY DR  
EUREKA, MT 59917 9492

**Priority Date:** MARCH 15, 1950

**Type of Historical Right:** FILED

**Purpose (use):** DOMESTIC

**Flow Rate:** 30.00 GPM

**Volume:** 2.00 AC-FT

**Households:** 1

**Maximum Acres:** 0.25

**Source Name:** SPRING, UNNAMED TRIBUTARY OF SINCLAIR CREEK

**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		N2SE	24	36N	27W	LINCOLN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PIPELINE

**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	0.25		SWNE	24	36N	27W	LINCOLN

**Total:** 0.25