

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: Deanna R. Welch; Thomas E. Welch

CASE 76D-0527-R-2023  
76D 30115750

**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

Domestic claim 76D 30115750 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 03/22/1984.

THE MAXIMUM ACRES CLAIMED MAY BE QUESTIONABLE. THE SUM OF THE PARCEL ACRES IS 0.362.

ONLY 0.25 ACRES OF THE CLAIMED PLACE OF USE APPEAR IRRIGATED FOR DOMESTIC PURPOSES.

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

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. DNRC may also add issue remarks providing some sort of notice to water users concerning a claim.

Montana law requires the Water Court to resolve issue remarks. Co-claimant Thomas E. Welch completed the issue remark resolution process. **If co-claimant Deanna R. Welch 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 Thomas E. Welch’s attempt at issue remark resolution for claim 76D 30115750. DNRC reported the issue remarks were resolved.

2. Mr. Welch confirmed by email that the historically accurate maximum acres irrigated should be reduced to 0.25 acres and provided a preponderance of evidence that

the historically accurate volume should be increased to 2.12 AF.

### **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. 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. 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.

5. 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.

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.

## **Analysis**

### **Issue remark resolution**

The DNRC reviewed the claim file and visited with Mr. Welch. The volume issue remark noted volume may require modification based upon resolution of the maximum acres irrigated issue remark, prompting a review of the claimed volume. DNRC discussed with Mr. Welch an increased volume from 1.00 AF to 2.12 AF based upon the DNRC guidelines of 1.50 AF/household and 2.50 AF/acre of domestic irrigation.<sup>1</sup> Mr. Welch confirmed by email that he agreed with the issue remark noting 0.25 acres of domestic irrigation and a volume increase to 2.12 AF.

The increased volume does not raise any concerns. The incorrect volume issue remark appeared on the claim. The claimed volume appeared to be too low based upon the volume guidelines and the claimed maximum acres irrigated and should have been issue remarked as such. The volume for irrigation claim 76D 30115750 should be increased to 2.12 AF. DNRC recommended removal of the maximum acres irrigated and volume issue remarks and acceptance of Mr. Welch's proposed modifications.

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**

Mr. Welch's proposed modification to the maximum number of acres irrigated is a reduction within the parameters of statement of claim 76D 30115750, justifies the modification to the claim, and resolves the maximum acres irrigated issue remarks on the claim.

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<sup>1</sup> Rule 19(b), Water Right Claim Examination Rules.

Mr. Welch’s proposed modification to volume overcomes prima facie statement of claim 76D 30115750, justifies the modification to the claim, and resolves the volume issue remark on the claim.

The issue remark noting lack of the claim’s inclusion in the previous Basin 76D decree served its notice purpose.

**Recommendations**

Domestic claim 76D 30115750 should be modified as follows to accurately reflect historical use.

<b><u>VOLUME:</u></b>	<del>1.00</del>	<b>2.12 AF</b>
<b>Households:</b>	1	
<b><u>MAXIMUM ACRES:</u></b>	<del>1.00</del>	<b>0.25</b>

<b><u>PLACE OF USE:</u></b>							
	<b><u>ACRES</u></b>	<b><u>GOVT LOT</u></b>	<b><u>QTR SEC</u></b>	<b><u>SEC</u></b>	<b><u>TWP</u></b>	<b><u>RGE</u></b>	<b><u>COUNTY</u></b>
	<del>1.00</del>		SESWE	4	30N	31W	LINCOLN
<b>TOTAL:</b>	<b>0.25</b>						

The issue remarks should be removed from the claim abstract.

A Post Decree Abstract of Water Right Claim accompanies 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**

Deanna R Welch  
 Thomas E Welch  
 156 Mahoney Rd  
 Libby MT 59923-2819

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

**Water Right Number:** 76D 30115750 STATEMENT OF CLAIM  
**Version:** 2 -- POST DECREE  
**Status:** ACTIVE

**Owners:** THOMAS E WELCH  
156 MAHONEY RD  
LIBBY, MT 59923 2819  
  
DEANNA R WELCH  
156 MAHONEY RD  
LIBBY, MT 59923 2819

**Priority Date:** DECEMBER 31, 1953

**Type of Historical Right:** USE

**Purpose (use):** DOMESTIC

**Flow Rate:** 5.00 GPM

**Volume:** 2.12 AC-FT

**Households:** 1

**Maximum Acres:** 0.25

**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		SESWNE	4	30N	31W	LINCOLN

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

**Diversion Means:** WELL

**Subdivision:** SICHTINGS SCENIC VIEW TRACT/LOT: 4

**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		SESWNE	4	30N	31W	LINCOLN

**Subdivision:** SICHTINGS SCENIC VIEW TRACT/LOT: 5

**Total:** 0.25

THE PLACE OF USE INCLUDES THE WEST HALF OF LOT 4.