

Montana Water Court
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FILED
01/12/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
76D-0528-R-2023
Stradley, Anna
6.00

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

* * * * *

CLAIMANTS: Jennifer G. Posselt; Wayne B. Posselt

CASE 76D-0528-R-2023
76D 141318-00

NOTICE OF FILING OF AMENDED MASTER'S REPORT

This Amended Master's Report was filed with the Clerk of the Montana Water Court. Please review this report carefully. You may file a written objection to the Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations.

The above stamped date indicates the date the Amended Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to the Amended Master's Report must be filed within 10 days of the date of the Amended Master's Report. Because the 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. This means your objection must be received no later than **13 days** from the above stamped date.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of the Amended 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 Amended Master's Report.

AMENDED MASTER'S REPORT

On January 9, 2024, claimants Jennifer Posselt and Wayne Posselt (Posselts), filed a written objection to the Master's Report stating they disagree with their last request and now agree with the means of diversion issue remark appearing on domestic claim 76D 141318-00.

Upon review of the case, the claim file, and the Posselts' objection it appears that the Master's Report issued on January 4, 2024 should be amended by striking Findings of Fact 2 and 3, Principle of Law 4, and the Analysis, Conclusions of Law, and Recommendations, and replacing them with the following:

Findings of fact

2. On January 9, 2024, Posselts filed a statement. Posselts agree with the issue remark stating the means of diversion appears to be "pipeline."

3. A preponderance of evidence establishes the historically accurate means of diversion for domestic claim 76D 141318-00 is "pipeline."

Principles of law

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.

Analysis

Means of diversion issue remark resolution

Posselts agree with the means of diversion issue remark stating they "agree the means of diversion is a pipeline."

Conclusions of law

The means of diversion issue remark, the information resulting in the issue remark, and Posselts' statement in agreement with the issue remark overcomes, by a preponderance of evidence, the prima facie proof afforded the means of diversion

identified by statement of claim 76D 141318-00. The means of diversion issue remark is resolved.

Recommendations

Domestic claim 76D 141318-00 should be modified as follows to accurately reflect historical use.

MEANS OF DIVERSION: **FLOWING** **PIPELINE**

The means of diversion issue remark 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

Jennifer G Posselt
Wayne B Posselt
254 Waynes Lane
Rexford MT 59930

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

Water Right Number: 76D 141318-00 STATEMENT OF CLAIM
Version: 5 -- POST DECREE
Status: ACTIVE

Owners: JENNIFER G POSSELT
254 WAYNES LANE
REXFORD, MT 59930

WAYNE B POSSELT
254 WAYNES LANE
REXFORD, MT 59930

Priority Date: MAY 15, 1918

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 15.00 GPM

Volume: 1.50 AC-FT

Households: 1

Maximum Acres: 0.58

Source Name: DODGE CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS THE BROCK PIPELINE.

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		NENWNE	35	37N	28W	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	0.58		SWSENE	35	37N	28W	LINCOLN

Total: 0.58

THE PLACE OF USE IS LOCATED IN LOT 7B5.