

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

\*\*\*\*\*

CLAIMANT: Sage Ranch LLC

CASE 76D-0542-R-2023  
76D 30118052

**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 30118052 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.

AERIAL PHOTOGRAPH NO(S). USGS ORTHO MOUNT MARSTON, DATED 1975, APPEARS TO INDICATE 1.2 ACRES IRRIGATED.

A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE. 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. Claimant Sage Ranch LLC completed the issue remark resolution process.

### **Issue**

Are the issue remarks resolved?

### **Findings of fact**

1. On February 27, 2024, DNRC filed a Memorandum concerning Sage Ranch LLC’s attempt at issue remark resolution for claim 76D 30118052. DNRC reported the issue remarks were resolved.

2. Sage Ranch LLC proposed that the historically accurate maximum acres irrigated should be reduced to 1.20 acres.

3. The volume should be 9.00 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 Alex Vickers, an individual helping Sage Ranch LLC. 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. Sage Ranch LLC confirmed in its amendment that it agreed with the issue remark noting 1.20 acres of domestic irrigation. Sage Ranch LLC did not mention volume.

The statement of claim failed to identify a volume, leaving the element blank. DNRC proposed a 9.00 AF volume based upon the DNRC guidelines of 1.50 AF/household (the statement of claim identified 20 people served or 4 households) and 2.50 AF/acre of domestic irrigation.<sup>1</sup> The proposed volume, based upon DNRC guidelines, does not raise any concerns. **If Sage Ranch LLC disagrees with DNRC's proposed volume of 9.00 AF, it should file an objection to this Master's Report.**

DNRC recommended removal of the maximum acres irrigated and volume issue remarks and acceptance of Sage Ranch LLC's proposed reduction to the maximum acres irrigated.

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

Sage Ranch LLC's proposed modification to the maximum number of acres irrigated is a reduction within the parameters of statement of claim 76D 30118052, justifies the modification to the claim, and resolves the maximum acres irrigated issue remark on the claim.

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

The proposed modification to volume resolves the blank volume identified by prima facie statement of claim 76D 30118052, 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 30118052 should be modified as follows to accurately reflect historical use.

<b><u>VOLUME:</u></b>	<del>BLANK</del>	<b>9.00 AF</b>
<b>Households:</b>	<del>± 4</del>	
<b><u>MAXIMUM ACRES:</u></b>	<del>4.00</del>	<b>1.20</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>1.20</del> <b>1.20</b>		<del>4.00</del> <b>4.00</b>	32	35N	25W	LINCOLN
<b>TOTAL:</b>	<b>1.20</b>		<b>4.00</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**

Sage Ranch LLC  
 104 Auzerais Ct  
 Los Gatos CA 95032-5703

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

**Water Right Number:** 76D 30118052 STATEMENT OF CLAIM  
**Version:** 2 -- POST DECREE  
**Status:** ACTIVE

**Owners:** SAGE RANCH LLC  
104 AUZERAIS CT  
LOS GATOS, CA 95032-5703

**Priority Date:** JULY 3, 2017

**Type of Historical Right:** FILED

**Purpose (Use):** DOMESTIC

**Flow Rate:** 20.00 GPM

**Volume:** 9.00 AC-FT

**Households:** 4

**Maximum Acres:** 1.20

**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	32	35N	25W	LINCOLN

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

**Diversion Means:** WELL

**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	1.20		SESWNE	32	35N	25W	LINCOLN

**Total:** 1.20