

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

CLAIMANT: Patricia D. Lindquist

CASE 76D-0561-R-2024
76D 30116500

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 30116500 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.

NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.

NO PRIORITY DATE WAS CLAIMED.

THE PRIORITY DATE MAY BE QUESTIONABLE. IT IS UNCLEAR WHETHER THE CLAIMED PRIORITY DATE IS 6/23/1972 OR 6/25/1973.

THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A FILED RIGHT.

THE CLAIMED VOLUME EXCEEDS THE 1.81 ACRE-FEET GUIDELINE FOR THIS PURPOSE. ITS ACCURACY CANNOT BE CONFIRMED DUE TO LACK OF DATA.

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. Claimant completed the issue remark resolution process.

Issue

Are the issue remarks resolved?

Findings of fact

1. On February 21, 2024, DNRC filed a Memorandum concerning Patricia D. Lindquist's attempt at resolution of the issue remarks. DNRC reported the issue remarks were resolved.

2. Ms. Lindquist filed an amendment to statement of claim 76D 30116500 proposing the following modifications:

- Priority Date of June 1, 1972¹
- Type of historical right “filed”
- Flow Rate 3.00 GPM
- Volume 1.81 AF

3. Ms. Lindquist also included a letter stating she submitted the amendment and agrees with the DNRC recommendations to resolve the issue remarks appearing on claim 76D 30116500.

4. A preponderance of evidence establishes the following historically accurate elements for claim 76D 30116500:

- Priority date June 23, 1972
- Type of historical right “filed”
- Flow Rate 3.00 GPM
- Volume 1.81 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.

¹ This appears to be a typographical error. The priority date supported by evidence attached to Ms. Lindquist’s amendment supports a priority date of **June 23, 1972**.

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. For groundwater appropriations between January 1, 1962 and July 1, 1973 a Notice of Appropriation and a Notice of Completion both had to be filed in order to have the priority date relate back to when the water was first diverted and used. If the appropriator only filed a Notice of Completion, the priority date is the date the Notice of Completion was filed. Section 89-2913(e), RCM (1965).

Analysis

Issue remark resolution

The DNRC reviewed the claim file and visited with Ms. Lindquist. Ms. Lindquist discussed the history of the property and confirmed which of the two well logs included with the statement of claim relate to her property. Ms. Lindquist confirmed that James Judkins developed her parcel of property in 1972. The notice of completion for the

domestic well was filed by Mr. Judkins with the Lincoln County Clerk and Recorder on June 23, 1972, thereby establishing the claim as a “filed” right with a June 23, 1972 priority date instead of the June 1, 1972 date suggested by Ms. Lindquist in her amendment. Because Ms. Lindquist noted her agreement with the recommendations made by DNRC and the law concerning priority dates for groundwater claims filed between January 1, 1962 and July 1, 1973, the priority date should be June 23, 1972. (See Principle of Law 8.) Ms. Lindquist stated the flow rate should be 3.00 GPM² and agreed to reduce the volume to 1.81 AF. The DNRC recommends removal of the issue remarks and acceptance of Ms. Lindquist’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.

Conclusion of law

Ms. Lindquist’s proposed modification to volume is a reduction within the parameters of statement of claim 76D 30116500 and resolves the volume issue remark on the claim.

Ms. Lindquist’s confirmation of the historically accurate filed notice of appropriation for her property, priority date, type of historical right, and flow rate, overcomes prima facie statement of claim 76D 30116500, justifies the modifications to the claim, and resolves the priority date, type of historical right, multiple sources, and flow rate 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.

² The 3.00 GPM flow rate is well below the DNRC guideline of 35.00 GPM, appears reasonable, can achieve the reduced volume, and does not raise any concerns about an excessive flow rate. See Water Right Claim Examination Rule 19(b)(1).

Recommendations

Domestic claim 76D 30116500 should be modified as follows to accurately reflect historical use.

<u>PRIORITY DATE:</u>	BLANK	JUNE 23, 1972
<u>TYPE OF HISTORICAL RIGHT:</u>	BLANK	FILED
<u>FLOW RATE:</u>	BLANK	3.00 GPM
<u>VOLUME:</u>	5.00 AF	1.81 AF

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

Patricia D Lindquist
275 Sunnyside Dr
Libby, MT 59923

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

Water Right Number: 76D 30116500 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: PATRICIA D LINDQUIST
275 SUNNYSIDE DR
LIBBY, MT 59923

Priority Date: JUNE 23, 1972

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 3.00 GPM

Volume: 1.81 AC-FT

Households: 1

Maximum Acres: 0.13

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	4	SENWNW	6	29N	30W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

THE POINT OF DIVERSION IS LOCATED IN CERTIFICATE OF SURVEY 718.

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	0.13	4	SENWNW	6	29N	30W	LINCOLN

Total: 0.13

THE PLACE OF USE IS LOCATED IN CERTIFICATE OF SURVEY 718.