

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: Chelsea Leger; Michael Leger

CASE 76D-0600-R-2024

76D 134822-00

76D 134826-00

76D 134829-00

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 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

Power generation claim 76D 134822-00-00 received the following issue remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

MEANS OF DIVERSION AND RESERVOIR RECORD WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 4 TIMES THE CAPACITY OF THE RESERVOIR.

Power generation claim 76D 134826-00-00 received the following issue remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

MEANS OF DIVERSION AND RESERVOIR RECORD WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 1.07 TIMES THE CAPACITY OF THE RESERVOIR.

Power generation claim 76D 134829-00-00 received the following issue remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 71.4 TIMES THE CAPACITY OF THE RESERVOIR.

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. The issue remarks were not resolved through the objection process. However, there was enough information in the claim files and before the court to resolve the issue remarks.

Issue

Are the issue remarks resolved?

Finding of fact

The Preliminary Decree abstracts for the above captioned power generation claims identify their historically accurate elements.

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. This prima facie proof may be contradicted and 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. 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.

4. 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.

Analysis

The Preliminary Decree abstracts for each claim identify their purpose as power generation. Power generation claims due to their very nature normally do not utilize stored water, but cycle water through a system to generate power. True to the nature of power generation claims, stored water is not a component identified by the above captioned statements of claim or their attachments. (*See* the February 16, 1983 Reservoir Questionnaire in claim file 76D 134822-00 stating the claim does not use stored water; the statements of claim identifying the source as a lake, not a reservoir; and the maps and statements attached to the statements of claim depicting and describing the system.) The reservoir information added by DNRC was not objected to and while extraneous shall remain on the abstracts. The excessive volume issue remark based upon each reservoir record and capacity of each reservoir is irrelevant due to these power generation claims not using stored water.

Additional issue remarks on each claim note certain elements were modified by DNRC during claims examination. Each issue remark instructed claimants and other water users that if no objections were filed to the elements identified by the issue remarks, the elements would remain as they appear on the Preliminary Decree abstract. No one objected to the elements of the claims.

Conclusion of law

There is no indication that the above captioned power generation claims use stored water. The excessive volume issue remark based on each claim does not raise an issue requiring resolution.

The issue remarks concerning the elements modified by DNRC served their notice purpose.

Recommendations

Power generation claims 76D 134822-00, 76D 134826-00, and 76D 134829-00 accurately reflect historical use. No changes to the elements of the claims should be made.

The issue remarks should be removed from the 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

Chelsea Leger
Michael Leger
PO Box 82
Fortine MT 59918-0082

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

Water Right Number: 76D 134822-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CHELSEA LEGER
PO BOX 82
FORTINE, MT 59918-0082

MICHAEL LEGER
PO BOX 82
FORTINE, MT 59918-0082

Priority Date: OCTOBER 6, 1964

Type of Historical Right: USE

Purpose (Use): POWER GENERATION

Flow Rate: 95.00 GPM

Volume: 92.00 AC-FT

Source Name: UNNAMED TRIBUTARY OF LAUGHING WATER 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		SENE	32	35N	25W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENE	32	35N	25W	LINCOLN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 10.00 FEET

Depth: 8.00 FEET

Surface Area: 2.80 ACRES

Capacity: 8.96 ACRE-FEET

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			S2NE	32	35N	25W	LINCOLN

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

Water Right Number: 76D 134826-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CHELSEA LEGER
PO BOX 82
FORTINE, MT 59918-0082

MICHAEL LEGER
PO BOX 82
FORTINE, MT 59918-0082

Priority Date: OCTOBER 6, 1964

Type of Historical Right: USE

Purpose (Use): POWER GENERATION

Flow Rate: 25.00 GPM

Volume: 24.00 AC-FT

Source Name: UNNAMED TRIBUTARY OF LAUGHING WATER 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		SENE	32	35N	25W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENE	32	35N	25W	LINCOLN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 10.00 FEET

Depth: 8.00 FEET

Surface Area: 2.80 ACRES

Capacity: 8.96 ACRE-FEET

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			S2NE	32	35N	25W	LINCOLN

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

Water Right Number: 76D 134829-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: CHELSEA LEGER
PO BOX 82
FORTINE, MT 59918-0082

MICHAEL LEGER
PO BOX 82
FORTINE, MT 59918-0082

Priority Date: OCTOBER 6, 1964

Type of Historical Right: FILED

Purpose (Use): POWER GENERATION

Flow Rate: 4.01 CFS

Volume: 1,600.00 AC-FT

Source Name: LAUGHING WATER 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		SENE	32	35N	25W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENE	32	35N	25W	LINCOLN

Diversion to Reservoir: DIVERSION # 1

Dam Height: 10.00 FEET

Depth: 8.00 FEET

Surface Area: 2.80 ACRES

Capacity: 8.96 ACRE-FEET

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			S2NE	32	35N	25W	LINCOLN