

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: United States of America (USDA Forest
Service)

CASE 76D-0553-R-2024
76D 52133-00

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

Commercial claim 76D 52133-00 appeared in the Preliminary Decree with the following issue remarks.

THE FLOW RATE AND VOLUME IS MISSING.

THE PRIORITY DATE OF THIS CLAIM IS UNCLEAR AS MULTIPLE PRIORITY DATES HAVE BEEN CLAIMED. 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.

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.

Pursuant to statute, the court reviewed the claim file in an attempt to resolve the issue remarks appearing on commercial claim 76D 52133-00. Based on that review it appeared the claim did not have a priority date *prior* to July 1, 1973, and therefore was not an existing right that should be included in the Water Court’s decree. The court provided the United States of America (USDA Forest Service) an opportunity to refute its review of the record and file additional documentation supporting a priority date *prior* to July 1, 1973. On March 14, 2024, the United States of America (USDA Forest Service) filed a Notice of Withdrawal of Statement of Claim. Attached to the Notice, was a Request to Withdraw a Water Right for claim 76D 52133-00.

Issue

Should commercial claim 76D 52133-00 be dismissed?

Finding of fact

Commercial claim 76D 52133-00 should be dismissed.

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. 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.

5. “‘Existing right’ or ‘existing water right’ means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973.” Section 85-2-102(13), MCA.

Analysis

The United States of America (USDA Forest Service) filed a Request to Withdraw a Water Right. The Request states “Water right is a post-1973 use of groundwater, claim 76D 52133-00 should be withdrawn.”

Conclusion of law

The United States of America (USDA Forest Service) agrees claim 76D 52133-00 should not be included in the Water Court’s decree. The Request to Withdraw a Water Right should be granted.

Recommendation

Commercial claim 76D 52133-00 should be dismissed.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm dismissal of the claim in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail

Mark J. Widerschein
U.S. Dept of Justice, ENRD-NRS
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 532-5803
Mark.widerschein@usdoj.gov
MontanaBasins.ENRD@usdoj.gov

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

Water Right Number: 76D 52133-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date:

Type of Historical Right:

Purpose (Use): COMMERCIAL

Flow Rate:

Volume:

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.