

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

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CLAIMANT: United States of America (USDA Forest  
Service)

CASE 76D-0555-R-2024  
76D 52143-00  
76D 52160-00

**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 52143-00 appeared in the Preliminary Decree with a

priority date of June 1, 1963, and with the following issue remarks concerning the priority date and type of historical right:

THE CLAIMED PRIORITY DATE DIFFERS FROM THE EARLIEST DATE ON THE FILED NOTICE. THE CLAIMED PRIORITY DATE CANNOT BE SUBSTANTIATED.

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

Commercial claim 76D 52160-00 appeared in the Preliminary Decree with a priority date of June 1, 1962, and with the following issue remark concerning the priority date:

THE PRIORITY DATE MAY BE QUESTIONABLE. NO DOCUMENTATION AS REQUIRED BY THE 1961 GROUNDWATER CODE WAS SUBMITTED TO SUPPORT THIS CLAIM.

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 § 85-2-248(3), MCA an order set a deadline for claimant, the United States of America (USDA Forest Service), to file a copy of a duly filed Notice of Appropriation and/or Notice of Completion to support the earlier claimed priority dates of each claim.

On March 14, 2024, the United States of America (USDA Forest Service) filed its Response to Court Order. Attached to the Notice, was a Request to Withdraw a Water Right for claim 76D 52143-00. The United States of America (USDA Forest Service) submitted no further documentation for claim 76D 52160-00.

## **Issues**

1. Should commercial claim 76D 52143-00 be dismissed?
2. What priority date and type of historical right should commercial claim 76D 52160-00 identify?

## **Findings of fact**

1. Commercial claim 76D 52143-00 should be dismissed.
2. The priority date for commercial claim 76D 52160-00 should be April 27, 1982.
3. The type of historical right for commercial claim 76D 52160-00 should be “filed.”

## **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. Montana law required an appropriator of groundwater by means of a well between January 1, 1962 and July 1, 1973 to timely file a Notice of Completion of Groundwater Appropriation with the county clerk of the county in which the appropriation was located. Section 89-2913(d), RCM (1963). Until an appropriator filed a Notice of Completion no right to use the water was recognized. Section 89-2913(e),

RCM (1963). These provisions were repealed in 1973 with the enactment of § 85-2-306, MCA. The statute provides:

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962 and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim of existing water right pursuant to 85-2-221[a Statement of Claim] is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice as provided in subsection (3), or the date of the filing of the claim of existing water right.

## **Analysis**

### **Issue 1 – withdrawal of commercial claim 76D 52143-00**

The United States of America (USDA Forest Service) filed a Request to Withdraw a Water Right 76D 52143-00. The Request states “Paul Bunyan Campground is permanently closed. The Forest Service would prefer to withdraw our water rights.”

### **Conclusion of law**

The United States of America (USDA Forest Service) requests to withdraw commercial claim 76D 52143-00. The Request to Withdraw a Water Right should be granted.

## **Analysis**

### **Issue 2 – priority date issue remark resolution**

The United States of America (USDA Forest Service) filed no additional documentation to support the claimed June 1, 1962 priority date for commercial claim 76D 52160-00. Based upon the current record, the priority date for claim 76D 52160-00 should be the date the Statement of Claim was filed, April 27, 1982. The type of historical right should be changed from “use” to “filed” based upon the filed statement of claim.

### **Conclusion of law**

The United States of America (USDA Forest Service) could not find a filed Notice of Completion for commercial claim 76D 52160-00. The priority date of the claimed

appropriation is the date of the filing of the Statement of Claim. Section 85-2-306(4), MCA. The priority date issue remark appearing on claim 76D 52160-00 is resolved.

**Recommendations**

Commercial claim 76D 52143-00 should be dismissed.

Commercial claim 76D 52160-00 should be modified as follows.

<b><u>PRIORITY DATE:</u></b>	<del>JUNE 1, 1962</del>	<b>APRIL 27, 1982</b>
<b><u>TYPE OF HISTORICAL RIGHT:</u></b>	<del>USE</del>	<b>FILED</b>

The priority date issue remark should be removed from the abstract of claim 76D 52160-00.

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 Electronic Mail**

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

**Water Right Number:** 76D 52143-00 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:** SPRING, UNNAMED TRIBUTARY OF LIBBY CREEK

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

**Water Right Number:** 76D 52160-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

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

**Priority Date:** APRIL 27, 1982

**\*Type of Historical Right:** FILED

**Purpose (Use):** COMMERCIAL

**Flow Rate:** 14.36 GPM

**Volume:** 1.00 AC-FT

**Source Name:** SPRING, UNNAMED TRIBUTARY OF SPAR LAKE

**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		SESESE	16	29N	34W	LINCOLN

**Period of Diversion:** MAY 1 TO SEPTEMBER 30

**Diversion Means:** SPRING BOX

**Period of Use:** MAY 1 TO SEPTEMBER 30

**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			SESESE	16	29N	34W	LINCOLN