

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

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CLAIMANT: United States of America (USDA Forest  
Service)

**CASE 76D-0552-R-2024**

76D 52128-00

76D 52159-00

**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**

The above captioned claims appeared in the Preliminary Decree with the following issue remark:

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

Claim 76D 52128-00 received the following additional issue remark:

THIS CLAIM APPEARS TO BE DUPLICATED BY CLAIM NO. 76D 142679-00 WHICH IS BASED ON THE SAME FILED APPROPRIATION RIGHT. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.

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. Information before the court resolved the duplicate claim issue remark appearing on claim 76D 52128-00. Proceedings in Case 76D-0045-R-2022 resolved the duplicate claim issue remark appearing on domestic claim 76D 52128-00. The duplicate claim, 76D 142679-00, was withdrawn during those case proceedings.

The type of historical right issue remark on each claim was not resolved through the objection process and while there appeared to be enough information in the claim files and before the court to resolve the issue remark, pursuant to § 85-2-248(11), MCA the court may not resolve an issue remark modifying an element without agreement from the claimant. Therefore, a deadline was set for the United States of America (USDA Forest Service) to file evidence resolving the issue remark.

The United States of America (USDA Forest Service) filed a response agreeing with the type of historical right issue remark on each claim.

### **Issue**

What type of historical right should the above captioned claims identify?

### **Finding of fact**

The type of historical right for both claims 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. 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. 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. 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.

5. 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**

### **Type of historical right issue remark resolution**

Statement of claim 76D 52128-00 did not identify whether the claim was a decreed water right, filed appropriation right, or a use water right. However, attached to and in support of the statement of claim is a Notice of Completion of Groundwater Appropriation by Means of Well, filed with the Lincoln County Clerk and Recorder on May 25, 1966. The filed Notice of Completion of Groundwater Appropriation by Means of Well in the claim file supports the issue remark and that claim 76D 52128-00 is a “filed” right, thereby resolving the issue remark.

Statement of claim 76D 52159-00 did not identify whether the claim was a decreed water right, filed appropriation right, or a use water right. Additionally, no groundwater filings were included with and in support of the claim. Pursuant to Section 85-2-306(4), MCA, the priority date becomes the date the statement of claim was filed. During claims examination, DNRC modified the priority date to the statement of claim filing date and added a priority date information remark stating the priority date was modified and could be objected to but overlooked changing the type of historical right to “filed” based upon the filed statement of claim. The filed statement of claim supports the issue remark and that claim 76D 52159-00 is a “filed” right, thereby resolving the issue remark.

The United States of America (USDA Forest Service) agreed that the type of historical right for each claim should be “filed.”

**Conclusions of law**

Based on information in the claim files and before the court, and the claimant’s agreement with the type of historical right issue remark, the type of historical right for each claim should be “filed.” The type of historical right issue remark is resolved.

**Recommendations**

Claims 76D 52128-00 and 76D 52159-00 should be modified as follows to accurately reflect historical use.

**TYPE OF HISTORICAL RIGHT:**                      ~~USE~~                      **FILED**

The issue remarks appearing on the claims should be removed.

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**

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

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

**Water Right Number:** 76D 52128-00 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:** MAY 25, 1966

**Type of Historical Right:** FILED

**Purpose (Use):** DOMESTIC

**Flow Rate:** 4.04 GPM

**Volume:** 1.50 AC-FT

**Households:** 1

**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		NWNE	18	30N	29W	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			SWSWSE	7	30N	29W	LINCOLN

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

**Water Right Number:** 76D 52159-00 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 28, 1982

**Type of Historical Right:** FILED

**Purpose (Use):** COMMERCIAL

**Flow Rate:** 14.36 GPM

**Volume:** 1.00 AC-FT

**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		NENWNW	20	29N	33W	LINCOLN

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

**Diversion Means:** WELL

**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			NENWNW	20	29N	33W	LINCOLN