

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: Arthur R. Schauer

CASE 76D-0568-R-2024  
76D 141328-00

**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 domestic claim 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.

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. An order set a filing deadline for Arthur R. Schauer to file his agreement with “filed” as the type of historical right or evidence supporting the type of historical right. On March 6, 2024, Mr. Schauer filed his agreement that the type of historical right should be “filed.”

### **Issue**

What type of historical right should domestic claim 76D 141328-00 identify?

### **Finding of fact**

The type of historical right for domestic claim 76D 141328-00 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. 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**

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

Based upon a review of the record before the court, the statement of claim identified a “use water right.” The 1961 Ground Water Code stated that if you, or your predecessor, started digging your well after January 1, 1962, and did not file a Notice of Completion, then there was no valid ground water appropriation because the filing process was not completed. The notice of completion for claim 76D 141328-00 was filed on June 24, 1965. While DNRC correctly modified the priority date for claim 76D

141328-00, it failed to modify the type of historical right to “filed” based upon the filed notice of completion.

Based upon this information and pursuant to § 85-2-248(3), MCA, Mr. Schauer was ordered to file a statement with the court agreeing with the suggested type of historical right (“filed”) or to file evidence establishing the type of historical right. Mr. Schauer filed a statement in agreement with the suggested type of historical right by the deadline.

### **Conclusions of law**

Based on information in the claim file and before the court, and Mr. Schauer’s agreement with the issue remark, the type of historical right for domestic claim 76D 141328-00 should be “filed.” The type of historical right issue remark is resolved.

### **Recommendations**

Based upon the foregoing, domestic claim 76D 141328-00 should be modified as follows to accurately reflect historical use.

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

The type of historical right issue remark appearing on the claim should be removed.

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**

Arthur R Schauer  
1656 E 5th St Ext  
Libby MT 59923

\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Datavol)\Share\WC-BASIN FOLDERS\76D PD\76D Cases\76D-0568-R-2024\MR--76D-568R sjs.docx

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

**Water Right Number:** 76D 141328-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** ARTHUR R SCHAUER  
1656 E 5TH ST EXT  
LIBBY, MT 59923

**Priority Date:** JUNE 24, 1965

**Type of Historical Right:** FILED

**Purpose (Use):** DOMESTIC

**Flow Rate:** 10.00 GPM

**Volume:** 1.50 AC-FT

**Households:** 1

**Maximum Acres:** 0.25

**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	6	SESWNE	2	30N	31W	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	0.25	6	SWSWNE	2	30N	31W	LINCOLN

**Total:** 0.25