

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

CLAIMANT: United States of America (USDA Forest
Service)

CASE 76D-0554-R-2024

76D 52142-00

76D 52152-00

76D 52158-00

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 claims 76D 52142-00, 76D 52152-00, and 76D 52158-00 appeared in the Preliminary Decree with the following issue remarks:

AN AMENDMENT WAS SUBMITTED ON 11/24/2020 REQUESTING TO AMEND THE TYPE OF HISTORICAL RIGHT. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

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. The issue remarks are resolved by information in the claim files.

Claimant’s motion to amend each claim agrees with the type of historical right issue remark, proposing that the type of historical right should be “filed.”

Issues

1. What type of historical right should each claim identify?
2. Are the issue remarks on each claim resolved?

Finding of fact

The type of historical right for each of the above captioned commercial 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. 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. 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. If the settlement agreement expands or enlarges an element of a claim, the burden of proof must be met. If evidence does not meet the burden of proof, the element shall not be expanded or enlarged. Rule 17(b), W.R.Adj.R.

5. 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.

6. 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

Issues 1 and 2 – type of historical right and issue remark resolution

The statements of claim did not identify the type of historical right and the preliminary decree abstracts for each claim identify “use” as the type of historical right.

Each claim file includes a Notice of Completion of Groundwater Appropriation by Means of Well filed with the Lincoln County Clerk and Recorder.

Claimant filed an amendment for each claim with DNRC resulting in the amendment issue remark. Each amendment agrees with the issue remark, that the type of

historical right should be “filed.”

Conclusions of law

The type of historical right and amendment issue remarks, the information resulting in the issue remarks, the claim files, and claimant’s amendment in agreement with the type of historical right issue remark overcomes, by a preponderance of evidence, the lack of a type of historical right identified by the statements of claim. The issue remarks are resolved.

Recommendations

Commercial claims 76D 52142-00, 76D 52152-00, and 76D 52158-00 should be modified as follows to accurately reflect historical use.

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

The issue remarks should be removed from each claim abstract.

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

United States of America (USDA Forest Service)
Water Rights Program Manager, Northern Region
26 Fort Missoula Rd
Missoula MT 59804-7203

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

Water Right Number: 76D 52142-00 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: NOVEMBER 2, 1964

Type of Historical Right: FILED

Purpose (Use): COMMERCIAL

Flow Rate: 19.75 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		NESWNE	13	27N	31W	LINCOLN

Period of Diversion: JUNE 1 TO AUGUST 31

Diversion Means: WELL

Period of Use: JUNE 1 TO AUGUST 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			NESWNE	13	27N	31W	LINCOLN

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

Water Right Number: 76D 52152-00 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 12, 1964

Type of Historical Right: FILED

Purpose (Use): COMMERCIAL

Purpose Clarification: TIMBERLANE CAMPGROUND

Flow Rate: 22.44 GPM

Volume: 1.00 AC-FT

Source Name: GROUNDWATER

Source Type: GROUNDWATER

ALSO KNOWN AS TIMBERLANE WELL

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		NWSESW	35	32N	31W	LINCOLN

Period of Diversion: JUNE 1 TO AUGUST 31

Diversion Means: WELL

Period of Use: JUNE 1 TO AUGUST 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			NWSESW	35	32N	31W	LINCOLN

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

Water Right Number: 76D 52158-00 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 15, 1967

Type of Historical Right: FILED

Purpose (Use): COMMERCIAL

Flow Rate: 25.13 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		SESENW	4	28N	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			SESENW	4	28N	33W	LINCOLN