

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
(406) 586-4364  
1-800-624-3270  
Fax: (406) 522-4131  
[watercourt@mt.gov](mailto:watercourt@mt.gov)

FILED

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Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK DIVISION  
ROCK CREEK BASIN (76E)  
PRELIMINARY DECREE

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CLAIMANTS: Laurie Ruffner; Marty Ruffner

OBJECTOR: United States of America (USDA Forest Service)

CASE 76E-R29

76E 29129-00

76E 29130-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. Because this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this 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

The above-captioned claims appeared in the Preliminary Decree for Rock Creek, Tributary to Clark Fork River (Basin 76E). The claims are owned by Marty and Laurie Ruffner. The claims received objections from the United State of American Department of Agriculture (Forest Service). The claims also received issue remarks from the DNRC.

The claims were consolidated into Case 76E-R29 to resolve the Forest Service's objection and the issue remarks.

### FINDINGS OF FACT

1. Claim 76E 29129-00 appeared in the Preliminary Decree as a domestic claim. The claim received the following issue remarks:

ON 5/30/2008 DNRC FILED A MEMO STATING THAT THE PLACE OF USE AND OWNERSHIP ARE INCORRECT.

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE CORRECT POINT OF DIVERSION APPEARS TO BE THE NESWSE OF SECTION 30 TWP 9N RGE 17W GRANITE COUNTY.

2. The Forest Service objected to the claim stating that the point of diversion should be corrected to the NESWSE of Section 30, TWP 9N, RGE 17W, Granite County and that the corrections suggested by the DNRC in the memo dated May 30, 2008, should be implemented.

3. The DNRC memo from May 30, 2008, stated that the legal land description denoting the place of use in Government Lot 35 should be removed and replaced with a subdivision description reading: TROUTHAVEN ACRES LOT 35. The memo also suggested correcting the place of use to the SENWSE of Section 30, TWP 9N, RGE 17W, Granite County. Additionally, the memo noted that ownership of the claim should be corrected from Maty Ruffner to Marty Ruffner to accurately reflect the ownership of the claim.

4. Claim 76E 29130-00 appeared in the Preliminary Decree as an irrigation claim. The claim received the following issue remark:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE CORRECT POINT OF DIVERSION APPEARS TO BE THE NESWSE OF SECTION 30 TWP 9N RGE 17W GRANITE COUNTY.

5. The Forest Service objected to the claim stating that the point of diversion should be amended to reflect the legal land description noted in the issue remark and that place of use description should be corrected consistent with the corrections suggested by the DNRC in the memo dated May 30, 2008, regarding claim 76E 29129-00.

6. A Status Conference for Case 76E-R29 took place on December 10, 2019 by telephone conference call. Water Master Eugene C. White presided; Jennifer Najjar was present on behalf of the United States of America (Forest Service); Claimant Marty Ruffner was present on behalf of the Ruffners. Ms. Najjar explained the basis of the Forest Service Objections for the claims. Both parties agreed to a 60-day filing deadline for settlement documents.

7. On January 27, 2020, Claimants filed a letter with the court stating that they agreed with the corrections proposed by the May 30, 2008, DNRC memo and the objections filed by the Forest Service.

8. On February 3, 2020, the Forest Service filed its *Response to Claimants' Filing* indicating that modifying the claims in accordance with the May 30, 2008, DNRC memo and the corrections reiterated in the Claimants' letter specifically: (1) the correction of the point of diversion to NESWSE; (2) the correction of Mr. Ruffner's name to "Marty Ruffner"; and (3) the amendment of the place of use to specify Truthaven Acres Lot 35 on 76E 29129-00 would resolve the Forest Service's Objection.

#### PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

5. After the issuance of a temporary preliminary decree and close of the objection period in a basin, a claimant may amend its Statement of Claim. Section 85-2-233(6), MCA.

6. Notice is required to other water users if a motion to amend will adversely affect other water rights. Section 85-2-233(6), MCA.

7. A claimant asserting an amendment to its claim has the burden to show that the historical use of the claim is accurately reflected by the requested amendment. *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558.

#### CONCLUSIONS OF LAW

1. Claimants showed by a preponderance of the evidence that the point of diversion for claim 76E 29129-00 should be amended to the NESWSE of Section 30, TWP 9N, RGE 17W, Granite County.

2. Claimants also showed by a preponderance of the evidence that the ownership and place of use for claim 76E 29129-00 should be modified as described in Finding of Fact No. 3.

3. Claimants' requested amendments do not have the reasonable potential to adversely affect other water rights as it reflects how claim 76E 29129-00 has historically been used. Therefore, Claimants' amendments simply update the paper water right and do not make any changes to the actual historical use of the claimed right on the ground. Notice by publication of this amendment is not required.

4. The ownership, point of diversion, and place of use for claim 76E 29129-00 should be modified as described herein. These modifications resolve the issue remarks and the Forest Service's objection to claim 76E 29129-00.

5. Claimants showed by a preponderance of the evidence that ownership should be corrected from Maty Ruffner to Marty Ruffner and that the point of diversion for claim

76E 29130-00 should be amended to the NESWSE of Section 30, TWP 9N, RGE 17W, Granite County.

6. The requested corrections do not have the reasonable potential to adversely affect other water rights as it reflects how claim 76E 29130-00 has historically been used. Therefore, the corrections simply update the paper water right and do not make any changes to the actual historical use of the claimed right on the ground. Notice by publication of this amendment is not required.

7. The ownership and point of diversion for claim 76E 29130-00 should be modified as described herein. These modifications resolve the issue remark and the Forest Service's objection to claim 76E 29130-00.

### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

DATED this 1<sup>st</sup> day of June, 2020.



Eugene C. White  
Water Master

#### Service via USPS Mail:

Laurie Ruffner  
Marty Ruffner  
245 Carriage Rd  
Hamilton, MT 59840

#### Service via Electronic Mail:

Judith E. Coleman  
Trial Attorney  
US Dept of Justice, ENRD-NRS  
PO Box 7611  
Washington, DC 20044-7611  
(202) 514-3553  
judith.coleman@usdoj.gov  
MontanaBasins.ENRD@USDOJ.GOV