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FILED  
JUN 01 2020  
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: Barbara N. Clark; Larry E. Clark

OBJECTOR: Barbara N. Clark; United States of America (USDA  
Forest Service)

**CASE 76E-R64**  
76E 134488-00  
76E 134492-00  
76E 134495-00  
76E 134496-00

**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 are owned by Barbara N. Clark and Larry E. Clark. The claims received an objection from the United States of America, USDA Forest Service ("Forest Service") and an amendment that was processed as an objection from Barbara Clark. Claims 76E 134488-00, 76E 134492-00, and 76E 134495-00 also received notice-type issue remarks during the DNRC's preparation of the Preliminary Decree.

The claims were consolidated into Case 76E-R64 to resolve the Forest Service's objection.

### FINDINGS OF FACT

1. On December 10, 2019, the Court held a status conference in this matter. Judith Coleman appeared on behalf of the Forest Service. Barbara and Larry Clark were present, and Lee Yelin appeared on behalf of the Clarks.
2. The Forest Service objected to the place of use, point of diversion, and flow rate for the claims stating that quarter sections described encompass federal lands.
3. The Forest Service also stated that the following remark should be placed on the abstracts:

THE POINTS OF DIVERSION AND PLACES OF USE FOR THE CLAIM ARE  
APPURTENANT TO HOMESTEAD ENTRY SURVEY NOS. 104 AND 1124.
4. On October 1, 2018, claimant Barbara Clark filed a Verified Motion to Amend for claim 76E 134488-00 requesting to amend the priority date to June 4, 1897, to match the notice of appropriation filed to the claim. This Motion to Amend was accepted by the Court as an objection.
5. On February 28, 2020, the parties filed a *Stipulation to Resolve Objections*. In the *Stipulation*, the parties state that they agreed with the addition of the above-referenced remark. The *Stipulation* also states that the place of use for claims 76E 134488-00, 76E 134492-00, and 76E 134495-00 in section 27 should be modified from N2NW to N2N2NW and that the priority date for 76E 134488-00 should be modified to June 4, 1897.

6. Finally, the *Stipulation* states that the point of diversion and place of use for claim 76E 134496-00 should be modified as follows:

**Point of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		<del>NWNWNW</del> 27		7N	16W	Granite
		<u>SWSWSW</u>	<u>22</u>			

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	<del>5.00</del> <u>13.00</u>		<u>W2SWSWSW</u>	22	7N	16W	Granite
<del>2</del>	<del>8.00</del>		<del>NWSWSW</del>	<del>22</del>	<del>7N</del>	<del>16W</del>	<del>Granite</del>
<del>3</del>	<del>7.00</del>		<del>E2E2SE</del>	<del>21</del>	<del>7N</del>	<del>16W</del>	<del>Granite</del>
<u>2</u>	<u>2.50</u>		<u>SENESE</u>	<u>21</u>	<u>7N</u>	<u>16W</u>	<u>Granite</u>
<u>3</u>	<u>4.50</u>		<u>NESESE</u>	<u>21</u>	<u>7N</u>	<u>16W</u>	<u>Granite</u>

**TOTAL: 20.00**

7. Claim 76E 134488-00 received an issue remark stating that the priority date was in question because the date on the Notice of Appropriation, June 14, 1907, and the date on the Statement of Claim, June 4, 1897, did not match.

8. Claims 76E 134488-00, 76E 134492-00, and 76E 134495 also received a notice-type issue remark regarding a DNRC modification to the ditch name. The remark states that if no objections are filed regarding that element, the remark should be removed from the claims.

**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. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. 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.

6. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

7. Sanctions applied against a claimant may include modification of a claim to conform with data provided by the DNRC, information obtained by the Court, or information included in an objection, or the entry of default and termination of a water right claim. Rule 11, W.R.Adj.R.

8. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

9. The Water Court is not bound by parties' settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

#### CONCLUSIONS OF LAW

1. Based on the Forest Service's and Claimants' *Stipulation*, the parties have met the burden of proof by a preponderance of the evidence that each claim should be modified as described in Findings of Fact Nos. 3, 5, and 6. These modifications resolve the Forest Service's objections to each claim.

2. The issue remark on claim 76E 134488-00 pertaining to the priority date is resolved through the modification described in Finding of Fact No. 5. This modification also resolves the objection filed by claimant Barbara Clark on October 1, 2018.

3. The notice-type issue remarks appearing on claims 76E 134488-00, 76E 134492-00, and 76E 134495-00 served their notice purpose and should be removed from the claims.

RECOMMENDATIONS

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

A post decree abstract of the water right claims reflecting the recommended changes is attached to this Report.

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

*Eugene C. White*

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Eugene C. White  
Water Master

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