

Montana Water Court
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FILED

JUN 26 2020

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
BLACKFOOT RIVER - BASIN 76F

CLAIMANTS: Mary Zuniga Johnson; Matthew P. Johnson

CASE 76F-178
76F 120908-00
76F 120909-00
Severed Claims:
76F 30147008
76F 30147009

NOTICE OF FILING OF SECOND 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.*

SECOND MASTER'S REPORT

FINDINGS OF FACT

1. On February 10, 2020, the DNRC filed a memorandum with the court regarding a sever request for claims 76F 120908-00 and 76F 120909-00 submitted by Mary Zuniga Johnson and Matthew P Johnson.

2. A Master's Report addressing the sever request was issued on May 29, 2020. The Master's Report recommended that the severed portion of the claims' places of use be removed from the abstracts for claims 76F 120908-00 and 76F 120909-00.

On June 4, 2020, claimant Matthew Johnson filed an objection to the Master's Report pointing out a clerical error in Finding of Fact No. 3 and requesting the generation of additional abstracts to represent the severed portions of claims 76F 120908-00 and 76F 120909-00.

The case was recommitted to Water Master Madeleine Weisz to address the claimants' objections.

3. In the May 29, 2020 Master's Report, the Master incorrectly presumed the water severed from the place of use would be used on the remaining historic place of use and therefore did not create separate water rights for those severed portions of claims 76F 120908-00 and 76F 120909-00.

In addition, a clerical error was made in Finding of Fact No. 3 in the table listing the modified places of use for claims 76F 120908-00 and 76F 120909-00.

Accordingly, the May 29, 2020 Master's Report is superseded by this Second Master's Report, which corrects the clerical error and generates two additional claims to represent the severed portions of claims 76F 120908-00 and 76F 120909-00.

2. Claims 76F 120908-00 and 76F 120909-00 have identical places of use. The Johnsons' sever request indicates that portions of the place of use for claims 76F 120908-00 and 76F 120909-00 should be severed from the water right because those portions of the place of use were sold but the water rights were retained. In support, the Johnsons provide a Warranty Deed for tract A1D-1A which indicates that the Johnsons reserved ownership of claims 76F 120908-00 and 76F 120909-00. In addition, the

Johnsons provide Quitclaim Deeds in which the owners of Tracts A and 2-A quitclaim all right, title, and interest in claims 76F 120908-00 and 76F 120909-00 to the Johnsons.

3. Based on the request to sever a portion of the water rights from their historical place of use and the evidence in support, claims 76F 120908-00 and 76F 120909-00 should be decreed with the following place of use:

<u>ID</u>	<u>Acres</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>
1	19.00	NWNE	20	14N	8W
2	27.00 14.1	NENE	20	14N	8W
3	4.00 0.3	SENE	20	14N	8W
4	5.00	SWNE	20	14N	8W
Total: 38.4 acres					

4. Two additional claims will be generated to represent the severed portions of claims 76F 120908-00 and 76F 120909-00. The newly generated claim numbers will be 76F 30147008 and 76F 30147009. The place of use for claims 76F 30147008 and 76F 30147009 should be decreed as:

<u>ID</u>	<u>Acres</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>
1	12.9	NENE	20	14N	8W
2	3.7	SENE	20	14N	8W
Total: 16.6 acres					

A remark stating, “this water right has been severed from the place of use,” will be added to claims 76F 30147008 and 76F 30147009.

5. The sever request did not indicate how the flow rate should be divided between the original and severed claims. Accordingly, the 4.55 cfs flow rate will be divided proportionally based on acreage. Claims 76F 120908-00 and 76F 120909-00 will be decreed with a flow rate of 3.18 cfs and claims 76F 30147008 and 76F 30147009 will be decreed with a flow rate of 1.37 cfs.

CONCLUSIONS OF LAW

1. The requested severance of claims 76F 120908-00 and 76F 120909-00 does not increase any elements of the claims. The severance reflects the current ownership of

the claims and accurately reflects the deeds related to the historic place of use for claims 76F 120908-00 and 76F 120909-00.

2. The evidence provided in the Johnsons' 642 Divided Interest form and its attachments is sufficient to sever the claims as requested.

RECOMMENDATIONS

1. Claims 76F 30147008 and 76F 30147009 should be generated to represent the severed portions of claims 76F 120908-00 and 76F 120909-00 pursuant to the Johnsons' 642 Divided Interest form.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

DATED this 26th day of June, 2020.

 Digitally signed
by Madeleine
Weisz

Madeleine Weisz
Senior Water Master

Service via USPS Mail:

Mary Zuniga Johnson
Matthew P. Johnson
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Note: Caption Updated 6-25-20