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FILED

JUN 01 2020

Montana Water Court

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

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CLAIMANT: Munis Family Limited Partnership

OBJECTOR: Munis Family Limited Partnership

**76GJ-A3**  
76GJ 214139-00

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

You may file a written objection to this Master's Report if you disagree with the Master's Findings of Fact, Conclusion of Law, or Recommendations; or if there are errors in the Report.

The above stamped date indicates the date the Master's Report was filed and mailed. Rule 23 of the Water Adjudication Rules requires written objections to the Master's Report must be filed within 10 days of the date of the Master's Report.

Because the 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. This means your objection must be received no later than **13 days** from the above stamped date.

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 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**

Munis Family Limited Partnership irrigation claim 76GJ 214139-00 appeared in the Preliminary Decree with the following remarks:

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 76GJ 20016-00.

CLAIM WAS NOT INCLUDED IN THE BASIN 76GJ TEMPORARY PRELIMINARY DECREE ISSUED 03/29/1984.

POINT OF DIVERSION AND DITCH NAME MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

Munis Family Limited Partnership objected to the flow rate, volume, period of use, and period of diversion. The Affidavit Of Betty Munis was filed on March 30, 2018. It specifies the changes to be made to the flow rate, period of use, and period of diversion. As the Court was concerned the requested flow rate increase might create a decree exceeded issue, a scheduling conference was held on May 8, 2018. On December 19, 2018 Additional Documentation Regarding 76GJ 214139-00 was filed which addressed the Court's concerns. During these proceedings the claim was in Case 76GJ-R15.

The Affidavit also includes requested changes to the point of diversion, maximum acres, and place of use. On January 23, 2020 an order was issued deeming the Affidavit requesting these additional changes as the Munis Family Limited Partnership motion to amend the claims pursuant to section 85-2-233(6), MCA. This Case, 76GJ-RA3, was consolidated to address the motion to amend. The Order also states that notice of this motion to amend is required and included a draft notice for Munis Family Limited Partnership to review. On May 11, 2020 Munis Family Limited Partnership filed a Withdrawal Of Deemed Motion To Amend.

## APPLICABLE LAW

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to 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 the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

## FINDINGS OF FACT

1. The Preliminary Decree states that the flow rate is 193.00 gpm. The flow rate should be 1.75 cfs.
2. The Preliminary Decree states that the period of use and period of diversion are May 1 to October 1. The period of use and period of diversion should be April 25 to October 31.
3. The various remarks provide notice about the Temporary Preliminary Decree proceedings and about changes made prior to issuance of the Preliminary Decree. The remarks do not raise unresolved issues which need to be addressed. There are no proceedings required for these remarks. The remarks should be removed as having served their notice purpose.

## CONCLUSION OF LAW

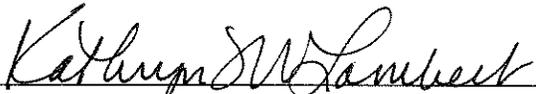
The settlement documentation is sufficient to contradict and overcome the prima facie claim.

## RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the

state's centralized record system.

DATED this 7<sup>th</sup> day of June, 2020.

  
Kathryn L. W. Lambert  
Senior Water Master

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