

Montana Water Court
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76M-4001-S-2021

December 3, 2021

Montana Water Court

MONTANA WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
CLARK FORK RIVER BETWEEN THE BLACKFOOT RIVER AND FLATHEAD
RIVER BASIN (76M)

* * * * *

CLAIMANTS: Flynn Family Partnership; Frances Mcquade; Patricia J Sinclair Family LLC; Zootown Investments LLC; Janelle L Donovan; Timothy P Donovan; Nicholas Holden; Sarah Holden; William E Mytty Jr; Brenda J Thomas; Charles Thomas; Connie R Thomas; Perry M Thomas

CASE 76M-4001-S-2021

76M 29117-00
 76M 29119-00
 76M 29120-00
 76M 29121-00
 76M 29122-00

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, conclusion 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

FINDINGS OF FACT

1. On April 22, DNRC Water Resource Specialist Kimberly Brown filed a Memorandum regarding the severance of claims 76M 29117-00, 76M 29119-00, 76M 29120-00, 76M 29121-00, and 76M 29122-00 from a portion of the place of use. Ms. Brown attached a Form 642 for each of the claims to the Memos. The attachments to the Memos included a Form 642 for each of the claims in the Case, a general abstract for each of the claims, a DNRC "Exhibit A, complete and correct review," correspondence between Ms. Brown and the Claimant, a second version of page 2 of Form 642, and a map. A deed was attached to the Memo for claim 76M 29122-00.

2. The Forms 642 requested that a portion of the place of use be severed from claims 76M 29117-00, 76M 29119-00, 76M 29120-00, 76M 29121-00, and 76M 29122-00.

3. The Memorandum and the attachments did not provide sufficient information for this Master to complete the requested partial severance of the place of use owned by Patricia J. Sinclair Family LLC without additional information. Additional information was needed regarding how the proposed flow rates and places of use of the parent claims are impacted by the partial severs. An Order Setting Filing Deadline was issued setting a deadline for Ms. Brown to file proposed abstracts showing how parent claims 76M 29117-00, 76M 29119-00, 76M 29120-00, 76M 29121-00, and 76M 29122-00 should appear after the parcel owned by Patricia J. Sinclair Family LLC is severed from the claims.

4. On September 16, 2021, Ms. Brown filed a Memorandum in response to this Master's Order. Ms. Brown enclosed proposed abstracts for claims 76M 29117-00, 76M 29119-00, 76M 29120-00, 76M 29121-00, and 76M 29122-00 showing how the claims should appear after the Patricia J. Sinclair Family, LLC property, at the following legal land description, is removed from the claims:

7. PLACE OF USE BEING EXEMPTED (RESERVED) / SEVERED	Entire Water Right? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N
20 acres N 1/2 $\frac{1}{4}$ NE 1/4 SW 1/4 Sec 12	TWP 13 <input checked="" type="checkbox"/> N <input type="checkbox"/> S RGE 20 <input type="checkbox"/> E <input checked="" type="checkbox"/> W
_____ acres _____ 1/4 _____ 1/4 Sec _____	TWP _____ <input type="checkbox"/> N <input type="checkbox"/> S RGE _____ <input type="checkbox"/> E <input type="checkbox"/> W
_____ acres _____ 1/4 _____ 1/4 Sec _____	TWP _____ <input type="checkbox"/> N <input type="checkbox"/> S RGE _____ <input type="checkbox"/> E <input type="checkbox"/> W
Lot/Tract 7 Block _____ Subdivision Name _____	
COS 3176 Gov't Lot _____ County Missoula	
Geocodes(s) 04-2199-12-1-01-02-0000	

5. To determine if the parties in Case 76M-4001-S-2021 agreed or disagreed with Ms. Brown's proposal, an Order Setting Filing Deadline was issued on September 21, 2021. The Order indicated that if nothing was filed by the deadline agreeing or disagreeing with the proposed changes, a Master's Report would be issued recommending the changes be made. The following language was included in the Order: Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.ADJ.R.

Nothing was filed.

CONCLUSIONS OF LAW

1. The requested severance for claims 76M 29117-00, 76M 29119-00, 76M 29120-00, 76M 29121-00, and 76M 29122-00 reflects the current record ownership of the claims.

2. The evidence provided by the Forms 642 is sufficient to sever 20.00 acres in the N2NESW of Section 12, Township 13 North, Range 20 West (Tract 7) of claims 76M 29117-00, 76M 29119-00, 76M 29120-00, 76M 29121-00, and 76M 29122-00 as requested by the Patricia J. Sinclair Family, LLC.

3. Pursuant to Rule 22, W.R.ADJ.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just. An Order was issued providing parties the opportunity to object to the proposed severance and nothing was filed. Twenty acres in the N2NESW of Section 12, Township 13 North, Range 20 West (Tract 7) of claims 76M 29117-00, 76M 29119-00, 76M 29120-00, 76M 29121-00, and 76M 29122-00 should be severed as requested by the Patricia J. Sinclair Family, LLC.

RECOMMENDATION

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court change claims 76M 29117-00, 76M 29119-00, 76M 29120-00, 76M 29121-00, and 76M 29122-00 as reflected on the attached Post Decree Abstracts.

Post Decree Abstracts of the water right claims addressed in this Master's Report are attached to confirm that the above changes have been made in the state's centralized water right record system.

Anika M. Stern
Senior Water Master

Service via USPS Mail:

Flynn Family Partnership
2100 Flynn Ln
Missoula, MT 59808

Nicholas Holden
Sarah Holden
2567 Hiawatha Rd
Missoula, MT 59808

Frances Mcquade
833 Deschamps Lane
Missoula, MT 59808

William E Mytty Jr
PO Box 4746
Missoula, MT 59806-4746

Patricia J Sinclair Family LLC
3167 Indianapolis Ave
Clovis, CA 93619

Brenda J Thomas
2550 Hiawatha
Missoula, MT 59808-5684

Zootown Investments LLC
2336 Aspen Grv
Missoula, MT 59801

Charles Thomas
Connie R Thomas
2500 Hiawatha
Missoula, MT 59808

Janelle L Donovan
Timothy P Donovan
2723 Grassland Dr
Missoula, MT 59808

Perry M Thomas
2780 Hiawatha Rd
Missoula, MT 59808

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
CLARK FORK, BETWEEN BLACKFOOT & FLATHEAD RIVERS
BASIN 76M**

Water Right Number: **76M 29117-00** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: SEVERED

Owners:
FRANCES MCQUADE
702 W WALNUT #224
COEUR D ALENE, ID 83814

FLYNN FAMILY PRTNRSHP
2100 FLYNN LN
MISSOULA, MT 59808

ZOOTOWN INVESTMENTS LLC
2336 ASPEN GRV
MISSOULA, MT 59801

Priority Date: JULY 15, 1867

Type of Historical Right: DECREED

Purpose (Use): STOCK

Flow Rate:

Volume: THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: GRANT CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SENWNE	7	13N	19W	MISSOULA

Period of Diversion: MAY 1 TO JULY 4

Diversion Means: MULTIPLE

Period of Use: MAY 1 TO JULY 4

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			W2NE	12	13N	20W	MISSOULA
2			NWSE	12	13N	20W	MISSOULA
3			S2NESW	12	13N	20W	MISSOULA
4			S2SENW	12	13N	20W	MISSOULA
5			E2SWSE	12	13N	20W	MISSOULA

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
CLARK FORK, BETWEEN BLACKFOOT & FLATHEAD RIVERS
BASIN 76M**

Water Right Number: **76M 29119-00** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: SEVERED

Owners:
FRANCES MCQUADE
702 W WALNUT #224
COEUR D ALENE, ID 83814

FLYNN FAMILY PRTNRSHP
2100 FLYNN LN
MISSOULA, MT 59808

ZOOTOWN INVESTMENTS LLC
2336 ASPEN GRV
MISSOULA, MT 59801

Priority Date: MAY 1, 1875

Type of Historical Right: DECREED

Purpose (Use): STOCK

Flow Rate:

Volume: THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: GRANT CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SENWNE	7	13N	19W	MISSOULA

Period of Diversion: MAY 1 TO JULY 4

Diversion Means: MULTIPLE

Period of Use: MAY 1 TO JULY 4

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			W2NE	12	13N	20W	MISSOULA
2			NWSE	12	13N	20W	MISSOULA
3			S2NESW	12	13N	20W	MISSOULA
4			S2SENW	12	13N	20W	MISSOULA
5			E2SWSE	12	13N	20W	MISSOULA

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
CLARK FORK, BETWEEN BLACKFOOT & FLATHEAD RIVERS
BASIN 76M**

Water Right Number: **76M 29120-00** **STATEMENT OF CLAIM**

Version: **2 -- POST DECREE**

Status: **SEVERED**

Owners:
JANELLE L DONOVAN
2723 GRASSLAND DR
MISSOULA, MT 59808

TIMOTHY P DONOVAN
2723 GRASSLAND DR
MISSOULA, MT 59808

NICHOLAS HOLDEN
2567 HIAWATHA RD
MISSOULA, MT 59808

SARAH HOLDEN
2567 HIAWATHA RD
MISSOULA, MT 59808

FRANCES MCQUADE
702 W WALNUT #224
COEUR D ALENE, ID 83814

WILLIAM E MYTTY JR
PO BOX 4746
MISSOULA, MT 59806 4746

BRENDA J THOMAS
2550 HIAWATHA
MISSOULA, MT 59808 5684

CHARLES THOMAS
2500 HIAWATHA
MISSOULA, MT 59808

CONNIE R THOMAS
2500 HIAWATHA
MISSOULA, MT 59808

PERRY M THOMAS
2780 HIAWATHA RD
MISSOULA, MT 59808

FLYNN FAMILY PRTNRSHP
2100 FLYNN LN
MISSOULA, MT 59808

ZOOTOWN INVESTMENTS LLC
2336 ASPEN GRV
MISSOULA, MT 59801

Priority Date: **JULY 15, 1867**

Type of Historical Right: **DECREED**

Purpose (Use): **IRRIGATION**

Irrigation Type: SPRINKLER/FLOOD
Flow Rate: 1.51 CFS
Volume: 120.60 AC-FT
Climatic Area: 3 - MODERATE
Maximum Acres: 257.00
Source Name: GRANT CREEK
Source Type: SURFACE WATER

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		SENWNE	7	13N	19W	MISSOULA

Period of Diversion: APRIL 15 TO JULY 19

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

Period of Use: APRIL 15 TO JULY 19

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	77.00		S2SE	11	13N	20W	MISSOULA
2	80.00		W2NE	12	13N	20W	MISSOULA
3	40.00		NWSE	12	13N	20W	MISSOULA
4	20.00		S2NESW	12	13N	20W	MISSOULA
5	20.00		S2SENW	12	13N	20W	MISSOULA
6	20.00		E2SWSE	12	13N	20W	MISSOULA
Total:	257.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

29120-00

29121-00

29122-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
CLARK FORK, BETWEEN BLACKFOOT & FLATHEAD RIVERS
BASIN 76M**

Water Right Number: **76M 29121-00** **STATEMENT OF CLAIM**

Version: **2 -- POST DECREE**

Status: **SEVERED**

Owners:
JANELLE L DONOVAN
2723 GRASSLAND DR
MISSOULA, MT 59808

TIMOTHY P DONOVAN
2723 GRASSLAND DR
MISSOULA, MT 59808

NICHOLAS HOLDEN
2567 HIAWATHA RD
MISSOULA, MT 59808

SARAH HOLDEN
2567 HIAWATHA RD
MISSOULA, MT 59808

FRANCES MCQUADE
702 W WALNUT #224
COEUR D ALENE, ID 83814

WILLIAM E MYTTY JR
PO BOX 4746
MISSOULA, MT 59806 4746

BRENDA J THOMAS
2550 HIAWATHA
MISSOULA, MT 59808 5684

CHARLES THOMAS
2500 HIAWATHA
MISSOULA, MT 59808

CONNIE R THOMAS
2500 HIAWATHA
MISSOULA, MT 59808

PERRY M THOMAS
2780 HIAWATHA RD
MISSOULA, MT 59808

FLYNN FAMILY PRTNRSHP
2100 FLYNN LN
MISSOULA, MT 59808

ZOOTOWN INVESTMENTS LLC
2336 ASPEN GRV
MISSOULA, MT 59801

Priority Date: **MAY 1, 1875**

Type of Historical Right: **DECREED**

Purpose (Use): **IRRIGATION**

Irrigation Type: FLOOD
Flow Rate: 3.70 CFS
Volume: 296.90 AC-FT
Climatic Area: 3 - MODERATE
Maximum Acres: 257.00
Source Name: GRANT CREEK
Source Type: SURFACE WATER

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		SENWNE	7	13N	19W	MISSOULA

Period of Diversion: APRIL 1 TO SEPTEMBER 30

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

Period of Use: APRIL 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	77.00		S2SE	11	13N	20W	MISSOULA
2	80.00		W2NE	12	13N	20W	MISSOULA
3	40.00		NWSE	12	13N	20W	MISSOULA
4	20.00		S2NESW	12	13N	20W	MISSOULA
5	20.00		S2SENW	12	13N	20W	MISSOULA
6	20.00		E2SWSE	12	13N	20W	MISSOULA
Total:	257.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

29120-00

29121-00

29122-00

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
CLARK FORK, BETWEEN BLACKFOOT & FLATHEAD RIVERS
BASIN 76M**

Water Right Number: **76M 29122-00** **STATEMENT OF CLAIM**

Version: **2 -- POST DECREE**

Status: **SEVERED**

Owners:
JANELLE L DONOVAN
2723 GRASSLAND DR
MISSOULA, MT 59808

TIMOTHY P DONOVAN
2723 GRASSLAND DR
MISSOULA, MT 59808

NICHOLAS HOLDEN
2567 HIAWATHA RD
MISSOULA, MT 59808

SARAH HOLDEN
2567 HIAWATHA RD
MISSOULA, MT 59808

FRANCES MCQUADE
702 W WALNUT #224
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MISSOULA, MT 59808 5684

CHARLES THOMAS
2500 HIAWATHA
MISSOULA, MT 59808

CONNIE R THOMAS
2500 HIAWATHA
MISSOULA, MT 59808

PERRY M THOMAS
2780 HIAWATHA RD
MISSOULA, MT 59808

FLYNN FAMILY PRTNRSHP
2100 FLYNN LN
MISSOULA, MT 59808

ZOOTOWN INVESTMENTS LLC
2336 ASPEN GRV
MISSOULA, MT 59801

Priority Date: **MAY 1, 1866**

Type of Historical Right: **DECREED**

Purpose (Use): **IRRIGATION**

Irrigation Type: FLOOD
Flow Rate: 3.70 CFS
Volume: 296.90 AC-FT
Climatic Area: 3 - MODERATE
Maximum Acres: 257.00
Source Name: GRANT CREEK
Source Type: SURFACE WATER

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		SENWNE	7	13N	19W	MISSOULA

Period of Diversion: APRIL 1 TO SEPTEMBER 30

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

Period of Use: APRIL 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	77.00		S2SE	11	13N	20W	MISSOULA
2	80.00		W2NE	12	13N	20W	MISSOULA
3	40.00		NWSE	12	13N	20W	MISSOULA
4	20.00		S2NESW	12	13N	20W	MISSOULA
5	20.00		S2SENW	12	13N	20W	MISSOULA
6	20.00		E2SWSE	12	13N	20W	MISSOULA
Total:	257.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

29120-00

29121-00

29122-00