

Montana Water Court  
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76E-0136-R-2019

September 16, 2021

Montana Water Court

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

\*\*\*\*\*

CLAIMANT: Shawn R. Comings

OBJECTORS: United States of America (Bureau of Land  
Management); United States of America (USDA  
Forest Service)

COUNTEROBJECTOR: Shawn R. Comings

NOTICE OF INTENT TO APPEAR: United States of America  
(Bureau of Land  
Management)

**CASE 76E-0136-R-2019**

76E 4749-00

76E 4750-00

76E 4751-00

76E 4752-00

76E 4753-00

76E 136925-00

**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**

### **FINDINGS OF FACT**

1. Shawn R. Comings is the current record owner of claims 76E 4749-00, 76E 4750-00, 76E 4751-00, 76E 4752-00, 76E 4753-00, and 76E 136925-00.

2. The United States of America, Bureau of Land Management (BLM) objected to claims 76E 4749-00, 76E 4750-00, 76E 4751-00, and 76E 4753-00; the Bureau of Land Management also filed Notices of Intent to Appear for the same claims. The United States of America, Forest Service (USFS) objected to claims 76E 4749-00, 76E 4750-00, 76E 4751-00, 76E 4752-00, 76E 4753-00, and 76E 136925-00.

3. Current record owner (Claimant) Shawn R. Comings filed a Counterobjection to claims 76E 4749-00, 76E 4750-00, 76E 4751-00, 76E 4752-00, 76E 4753-00, and 76E 136925-00 stating that ownership needed to be updated. On or around March 9, 2021, the DNRC water rights database was updated to show Shawn R. Comings as the sole owner of the claims.

4. Claim 76E 13925-00 was also decreed with a DNRC issue remark:

**THE CLAIMED MEANS OF DIVERSION CANNOT BE IDENTIFIED FROM AVAILABLE DATA.**

5. On August 27, 2021, the parties filed a Stipulation resolving the Objections, Counterobjections, and Notice of Intent to Appear concerns.

6. Claims 76E 4749-00, 76E 4750-00, 76E 4751-00, 76E 4752-00, and 76E 4753-00 are mining claims. According to the parties, the recorded mining claims associated with these water rights were closed in the 1990s. The Claimant agrees the claims should be dismissed.

7. Pursuant to the Stipulation, claim 76E 136925-00 is for water from Sawpit Gulch for mining purposes. Shawn R. Comings states that this right is not used in Section 32, Township 8 North, Range 15 West, but that the other places of use are accurate. Additionally, Claimant Shawn R. Comings understands that use of claim 76E 136925-00

for mining purposes may be subject to USFS and BLM permitting regulations. Pursuant to the Stipulation, the following changes should be made to claim 76E 136925-00:

\*Volume: 122.95 AC-FT

~~THIS USE IS ESSENTIALLY NON-CONSUMPTIVE. IN THE EVENT OF A SUBSEQUENT TRANSFER OR CHANGE OF THIS WATER RIGHT, THE USE SHALL BE DEEMED TO BE WHOLLY NON-CONSUMPTIVE~~

Please add:  
CMVI: THIS USE IS NON-CONSUMPTIVE.

**Point of Diversion and Means of Diversion:**

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NENENE	1	7N	16W	GRANITE
	Period of Diversion:	APRIL 1 TO DECEMBER 1				
	Diversion Means:	PUMP				
2		S2S2	31	8N	15W	GRANITE
	Period of Diversion:	APRIL 1 TO DECEMBER 1				
	Diversion Means:	PUMP				
3		N2SW	32	8N	16W	GRANITE
	Period of Diversion:	<del>APRIL 1 TO DECEMBER 1</del>				
	Diversion Means:	<del>PUMP</del>				
4		NWNWNW	6	7N	15W	GRANITE
	Period of Diversion:	APRIL 1 TO DECEMBER 1				
	Diversion Means:	PUMP				

POINT OF DIVERSION IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION.  
PUMP IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION.

**Place of Use:**

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
<del>1</del>			<del>SW</del>	<del>32</del>	<del>8N</del>	<del>15W</del>	<del>GRANITE</del>
2	1		S2S2	31	8N	15W	GRANITE
3	2		NENENE	1	7N	16W	GRANITE
4	3		NWNWNW	6	7N	15W	GRANITE

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R.; *Nelson v. Brooks*, 2014 MT 120, 375 Mont.86, 95, 329 P.3d 558, 564. It is appropriate to change claim 76E 136925-00 as proposed by the parties.

RECOMMENDATIONS

1. Claims 76E 4749-00, 76E 4750-00, 76E 4751-00, 76E 4752-00, and 76E

4753-00 should be dismissed.

2. Claim 76E 136925-00 should be changed as shown in Finding of Fact No. 7.
3. The issue remark should be removed from claim 76E 136925-00.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended changes have been made in the DNRC's water rights database.

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Anika M. Stern  
Senior Water Master

**Service via USPS Mail:**

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
ROCK CREEK, TRIBUTARY TO CLARK FORK RIVER  
BASIN 76E**

**Water Right Number:** 76E 4749-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** **DISMISSED**

**Owners:** SHAWN R COMINGS  
PO BOX 603  
PHILIPSBURG, MT 59858

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** MINING

**Flow Rate:**

**Volume:**

**Source Name:** NILES GULCH

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
ROCK CREEK, TRIBUTARY TO CLARK FORK RIVER  
BASIN 76E**

**Water Right Number:** 76E 4750-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** **DISMISSED**

**Owners:** SHAWN R COMINGS  
PO BOX 603  
PHILIPSBURG, MT 59858

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** MINING

**Flow Rate:**

**Volume:**

**Source Name:** ALDER GULCH

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
ROCK CREEK, TRIBUTARY TO CLARK FORK RIVER  
BASIN 76E**

**Water Right Number:** 76E 4751-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** SHAWN R COMINGS  
PO BOX 603  
PHILIPSBURG, MT 59858

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** MINING

**Flow Rate:**

**Volume:**

**Source Name:** ALDER GULCH

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
ROCK CREEK, TRIBUTARY TO CLARK FORK RIVER  
BASIN 76E**

**Water Right Number:** 76E 4752-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** **DISMISSED**

**Owners:** SHAWN R COMINGS  
PO BOX 603  
PHILIPSBURG, MT 59858

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** MINING

**Flow Rate:**

**Volume:**

**Source Name:** MINERS GULCH

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.



**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
ROCK CREEK, TRIBUTARY TO CLARK FORK RIVER  
BASIN 76E**

**Water Right Number:** 76E 4753-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** **DISMISSED**

**Owners:** SHAWN R COMINGS  
PO BOX 603  
PHILIPSBURG, MT 59858

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** MINING

**Flow Rate:**

**Volume:**

**Source Name:** ALDER GULCH

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
ROCK CREEK, TRIBUTARY TO CLARK FORK RIVER  
BASIN 76E**

**Water Right Number:** 76E 136925-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** SHAWN R COMINGS  
PO BOX 603  
PHILIPSBURG, MT 59858

**Priority Date:** DECEMBER 31, 1860

**Type of Historical Right:** USE

**Purpose (Use):** MINING

**Flow Rate:** 224.40 GPM

**\*Volume:** 122.95 AC-FT

THIS USE IS NON-CONSUMPTIVE.

**Source Name:** SAWPIT GULCH

**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		NENENE	1	7N	16W	GRANITE
<b>Period of Diversion:</b> APRIL 1 TO DECEMBER 1						
<b>Diversion Means:</b> PUMP						
2		S2S2	31	8N	15W	GRANITE
<b>Period of Diversion:</b> APRIL 1 TO DECEMBER 1						
<b>Diversion Means:</b> PUMP						
3		NWNWNW	6	7N	15W	GRANITE
<b>Period of Diversion:</b> APRIL 1 TO DECEMBER 1						
<b>Diversion Means:</b> PUMP						

POINT OF DIVERSION IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION.

PUMP IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION.

**Period of Use:** APRIL 1 TO DECEMBER 1

**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			S2S2	31	8N	15W	GRANITE
2			NENENE	1	7N	16W	GRANITE
3			NWNWNW	6	7N	15W	GRANITE