

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

CLAIMANT: State of Montana Board of Land
Commissioners

CASE 76F-6001-A-2022
76F 26822-00

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, conclusions 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. Montana, State Board of Land Commissioners/Trust Land Management Division (TLMD) filed a motion to amend Claim 76F 26822-00 on August 23, 2022.

2. The motion to amend requests corrections to the information remarks associated with the point of diversion and place of use.

The point of diversion and place of use are currently identified as:

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 | | NWNENW | 36 | 17N | 15W | POWELL |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

THE POINT OF DIVERSION IS LOCATED IN LOT 4 OF MORRELL FLATS SUBDIVISION.

Period of Use: JANUARY 1 TO DECEMBER 31

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 | | | NWNENW | 36 | 17N | 15W | POWELL |

THE PLACE OF USE IS LOCATED IN LOT 4 OF MORRELL FLATS SUBDIVISION.

TLMD indicates that the information remarks should be corrected to indicate the point of diversion and the place of use is located in "Lot 4, East Shore Morrell Creek."

3. Information remarks are "[r]emarks that limit, define, or explain unique aspects of a claim...." Rule 2(a)(57), W.R.C.E.R. Based on the claim file, it appears that the information remarks were originally added by the DNRC in 2006. According, to TLMD, the information remarks are incorrect.

TLMD's request to correct the information remarks does not propose a change to any elements of the claim. The point of diversion and place of use legal land description will remain as they appeared in the 76F Preliminary Decree issued February 10, 2011. The requested correction will serve the purpose of better explaining the location of the point of diversion and place of use, which is congruent with the purpose of information remarks. The information remarks should be corrected as requested.

4. TLMD also requests a correction to the geocode associated with claim 76F 26822-00. The water court does not decree geocodes; it decrees places of use, and geocodes do not appear on the abstracts decreed by the Water Court. The entry of

geocode information into the database and the deletion of geocode information from the database is managed solely by the DNRC. The parties may contact the DNRC to correct any geocode data they believe to be inaccurate.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 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. Rule 19, W.R.Adj.R. No changes are being made to the elements of claim 76F 26822-00.

2. The Water Court may correct a clerical mistake or a mistake arising from oversight or omission where one is found in a part of the record. Rule 60(a), M.R.Civ.P. The information remarks appearing on claim 76F 26822-00 contained incorrect information due to oversight. The information remarks should be corrected as requested by TLMD.

RECOMMENDATION

1. The claimant's motion to amend requesting correction of the information remarks appearing on claim 76F 26822-00 should be accepted by the court.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the recommended corrections have been made in the state's centralized record system.

Madeleine Weisz
Senior Water Master

Service via USPS Mail:

State of Montana Board of Land Commissioners
Trust Land Management Division
PO Box 201601
Helena, MT 59620-1601

Service via Electronic Mail:

Aislinn Brown
Assistant Attorney General
Agency Legal Services Bureau
PO Box 201440
Helena, MT 59620-1440
(406) 444-5857
Aislinn.brown@mt.gov
blcwatercourt@mt.gov

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
BLACKFOOT RIVER
BASIN 76F**

Water Right Number: 76F 26822-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620 1601

Priority Date: APRIL 15, 1957

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.00 AC-FT

Households: 1

Source Name: MORRELL 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 | | NWNENW | 36 | 17N | 15W | POWELL |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

THE POINT OF DIVERSION IS LOCATED IN LOT 4, EAST SHORE MORRELL CREEK.

Period of Use: JANUARY 1 TO DECEMBER 31

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 | | | NWNENW | 36 | 17N | 15W | POWELL |

THE PLACE OF USE IS LOCATED IN LOT 4, EAST SHORE MORRELL CREEK.