

Montana Water Court
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FILED
12/06/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41S-0764-R-2024
Stern, Anika
2.00

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
JUDITH RIVER BASIN (41S)
PRELIMINARY DECREE

CLAIMANTS: Harry R. Clark; Raymond S. Clark

CASE 41S-0764-R-2024
41S 5976-00

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. Harry R. Clark and Raymond S. Clark are the record owners of mining claim 41S 5976-00.

2. Claim 41S 5976-00 was decreed with the means of diversion listed as:

Diversion Means: **MULTIPLE**
THE POINT OF DIVERSION AND PLACE OF USE ARE ALL ALONG SOURCE WITHIN FAULT LODE, MINERAL SURVEY NO. 10955 AND IRON KING LODE, MINERAL SURVEY NO. 10951.

3. Claim 41S 5976-00 was decreed with a DNRC issue remark:

THE CLAIMED MEANS OF DIVERSION DOES NOT APPEAR STANDARDIZED AND CANNOT BE CLARIFIED FROM AVAILABLE DATA.

Information in the claim file suggests the means of diversion for this mining claim *may* be a pump, however, additional information is needed to confirm this.

4. An Order was issued setting a deadline for Claimants Harry R. Clark and Raymond S. Clark to file a statement indicating the means of diversion for claim 41S 5976-00. The Order indicated that if nothing were filed by the deadline, a Master’s Report would be issued recommending leaving the means of diversion listed as “multiple” which could create controversy or confusion in the future. Nothing was filed by the September 24, 2024 deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The issue remarks were not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence.

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. There is not sufficient evidence to overcome the prima facie Statement of Claim.

RECOMMENDATION

1. The issue remark should be removed from claim 41S 5976-00 with no changes to the elements of the claim.

An abstract is attached for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Raymond S. Clark
PO Box 203
Stanford, MT 59479-0203

Harry R. Clark
5610 Vulk Dr
Helena, MT 59602-8934

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JUDITH RIVER
BASIN 41S**

Water Right Number: 41S 5976-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RAYMOND S CLARK
PO BOX 203
STANFORD, MT 59479-0203

Priority Date: SEPTEMBER 5, 1914

Type of Historical Right: USE

Purpose (Use): MINING

THIS WATER RIGHT IS INCIDENTALY USED FOR FIRE PROTECTION.

Flow Rate: 110.00 GPM

Volume: 68.29 AC-FT

Source Name: RUNNING WOLF CREEK

Source Type: SURFACE WATER

SPRING HYDROLOGICALLY RELATED TO SOURCE.

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		W2	6	14N	11E	JUDITH BASIN

Period of Diversion: FEBRUARY 29 TO DECEMBER 1

Diversion Means: MULTIPLE

THE POINT OF DIVERSION AND PLACE OF USE ARE ALL ALONG SOURCE WITHIN FAULT LODGE, MINERAL SURVEY NO. 10955 AND IRON KING LODGE, MINERAL SURVEY NO. 10951.

Period of Use: FEBRUARY 29 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				6	14N	11E	JUDITH BASIN

Contract for Deed Purchasers: HARRY R CLARK
5610 VULK DR
HELENA, MT 59602-8934

THIS WATER RIGHT IS APPURTENANT TO REAL PROPERTY THAT IS THE SUBJECT OF A CONTRACT FOR DEED. THE CONTRACT FOR DEED PURCHASER IS ENTITLED TO THE SAME NOTICE AS THE OWNER OF THE PROPERTY PURSUANT TO 85-2-232(1)(C) AND 70-20-115, MCA. REFERENCE TO THE CONTRACT FOR DEED PURCHASERS IN THIS ABSTRACT IS FOR NOTICE PURPOSES ONLY AND DOES NOT AMOUNT TO A STATEMENT REGARDING OWNERSHIP. UPON TRANSFER OF THE PROPERTY IDENTIFIED AS THE PLACE OF USE FOR THIS WATER RIGHT, THE TRANSFEREE IS RESPONSIBLE FOR UPDATING OWNERSHIP AS REQUIRED BY 85-2-423 AND -424, MCA. IN THE EVENT OF A DEFAULT RESULTING IN TERMINATION OF THE CONTRACT FOR DEED AND RELEASE OF DOCUMENTS FROM ESCROW, THE OWNERS SHALL PROVIDE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WITH A COPY OF A QUIT CLAIM DEED OR SIMILAR INSTRUMENT INDICATING THE CONTRACT FOR DEED PURCHASERS ARE NO LONGER ENTITLED TO RECEIVE NOTICE OF PROCEEDINGS INVOLVING THIS WATER RIGHT.