

IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK DIVISION  
CLARK FORK RIVER BELOW THE FLATHEAD RIVER BASIN (76N)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANTS: Arthur A. Harlow Trust; Michele L. Troudt-  
Harlow Trust

**76N-0041-R-2024**  
76N 810-00  
76N 811-00

**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. Claims 76N 810-00 and 76N 811-00 appeared in the 76N Preliminary Decree with DNRC issue remarks. The claims did not receive any objections.
2. Both claims received the following notice-only issue remarks:

THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD WAS 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.

THE VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND VOLUME REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

The issue remarks are considered “notice only” issue remarks because they are for the purpose of providing notice and do not require further proceedings to resolve. The issue remarks above should be removed from both claims.

3. The claims also received volume issue remarks that require resolution.

Claim 76N 810-00 received a remark stating:

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE.  
THE CLAIMED VOLUME EQUALS 16.52 TIMES THE CAPACITY OF THE RESERVOIR.

Claim 76N 811-00 received a remark stating:

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE.  
THE CLAIMED VOLUME EQUALS 120 TIMES THE CAPACITY OF THE RESERVOIR.

The DNRC was asked to review the issue remarks and determine whether the remarks could be addressed without further information from the claimant.

On November 7, 2024 the DNRC filed a memorandum addressing the volume issue remarks on the claims. The DNRC reported claimant contact was not necessary to resolve the issue remarks and that the issue remarks should be removed from the claims.

### 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.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

3. The requirement to resolve issue remarks does not eliminate the prima facie status granted to water rights, nor does it change the burden of proof required to modify or invalidate a claim. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

The volume issue remarks appearing on claims 76N 810-00 and 76N 811-00 do not overcome the prima facie status of the claims. The issue remarks should be removed from the claim abstracts.

### RECOMMENDATIONS

1. The issue remarks should be removed from claims 76N 810-00 and 76N 811-00

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Arthur A. Harlow Trust  
Michele L. Troudt-Harlow Trust  
PO Box 277  
Thompson Falls, MT 59873

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
CLARK FORK, BELOW FLATHEAD RIVER  
BASIN 76N**

**Water Right Number:** 76N 810-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** HARLOW, ARTHUR A TRUST  
PO BOX 277  
THOMPSON FALLS, MT 59873  
  
TROUDT-HARLOW, MICHELE L TRUST  
PO BOX 277  
THOMPSON FALLS, MT 59873

**Priority Date:** SEPTEMBER 3, 1891

**Type of Historical Right:** DECREED

**Purpose (Use):** RECREATION

**Flow Rate:** 5.00 CFS

**Volume:** 55.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

**Source Name:** SQUAW 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		NWSWNE	19	22N	29W	SANDERS

**\*Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** HEADGATE

**\*Reservoir:** OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNESW	19	22N	29W	SANDERS

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 10.00 FEET

**Depth:** 7.00 FEET

**Surface Area:** 0.69 ACRES

**Capacity:** 1.93 ACRE-FEET

**\*Reservoir:** OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNWSW	19	22N	29W	SANDERS

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 12.00 FEET  
**Depth:** 9.00 FEET  
**Surface Area:** 0.39 ACRES  
**Capacity:** 1.40 ACRE-FEET

THE CAPACITY, DAM HEIGHT, MAXIMUM DEPTH AND SURFACE AREA HAVE BEEN ESTIMATED BY DNRC.

**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			NWNWSW	19	22N	29W	SANDERS
2			NWNESW	19	22N	29W	SANDERS

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME RESERVOIR.

810-00	811-00	40618-00	40619-00	40620-00	40621-00
40622-00	40623-00				

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

808-00	809-00	810-00	811-00	812-00	813-00
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THE IMPLIED CLAIMS LISTED FOLLOWING THIS STATEMENT WERE AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM. 76N 40618-00, 76N 40619-00, 76N 40620-00.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
CLARK FORK, BELOW FLATHEAD RIVER  
BASIN 76N**

**Water Right Number:** 76N 811-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** HARLOW, ARTHUR A TRUST  
PO BOX 277  
THOMPSON FALLS, MT 59873  
  
TROUDT-HARLOW, MICHELE L TRUST  
PO BOX 277  
THOMPSON FALLS, MT 59873

**Priority Date:** SEPTEMBER 3, 1891

**Type of Historical Right:** DECREED

**Purpose (Use):** FISH AND WILDLIFE

**Flow Rate:** 5.00 CFS

**Volume:** 400.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

**Source Name:** SQUAW 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		NWSWNE	19	22N	29W	SANDERS

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**Diversion Means:** HEADGATE

**\*Reservoir:** OFFSTREAM

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THE IMPLIED CLAIMS LISTED FOLLOWING THIS STATEMENT WERE AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM. 76N 40621-00, 76N 40622-00, 76N 40623-00.