

Montana Water Court  
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**FILED**  
09/19/2024  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: Elizabeth Draper  
76HF-6002-A-2024  
Nordlund, Julia  
2.00

IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK DIVISION  
WESTSIDE SUBBASIN OF THE BITTERROOT RIVER BASIN (76HF)

\*\*\*\*\*

CLAIMANTS: Delores D. Davis; Ivan N. Davis

**CASE 76HF-6002-A-2024**  
76H 150766-00

**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. On February 25, 2005, this Court issued a Master's Report making corrections to claim 76H 150766-00. The Master's Report was Adopted on April 19, 2005.

2. On August 5, 2024, Jim Nave from the Department of Natural Resources and Conservation, submitted an email to the Court that stated he discovered an error on claim 76H 150766-00 during the examination of a different claim.

3. The original claim form, well log, map, examination worksheet, etc. all indicate the place of use for claim 76H 150766-00 is Sec. 10, Twp. 4N, Rge. 21W. After an Objection was filed to the place of use, the February 25, 2005 Master's Report changed the place of use section from 10 to 9. However, at some point prior to the issuance of the 2005 Master's Report, the place of use was changed to Sec. 9, Twp. 9N, Rge. 21W. It is unclear how the change occurred.

4. This was done in error. The place of use for claim 76H 150766-00 should be changed back to Sec. 9, Twp. 4N, Rge. 21W.

### CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 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 an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v. Burkhartsmeier et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master's Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as "a relatively modest standard that the statutory criteria are 'more probable than not' to have been met." *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

3. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

4. Montana Rule of Civil Procedure 60(a) provides:

The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the supreme court and while it is pending, such a mistake may be corrected only with the supreme court's leave.

5. It is appropriate to make a Rule 60(a) correction as the Court erred in changing the township for claim 76H 150766-00. It should be changed back to Sec. 9, Twp. 4N, Rge. 21W.

#### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above to correct claim 76H 150766-00. A Post Decree Abstract is served with this Report to confirm the recommended corrections have been made in the state's centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

#### Service via USPS Mail:

Delores D. Davis  
Ivan D. Davis  
342 Lost Horse Rd  
Hamilton, MT 59840

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
WESTSIDE SUBBASIN- BITTERROOT RIVER  
BASIN 76H**

**Water Right Number:** 76H 150766-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** DELORES D DAVIS  
342 LOST HORSE RD  
HAMILTON, MT 59840

IVAN N DAVIS  
342 LOST HORSE RD  
HAMILTON, MT 59840

**Priority Date:** JULY 31, 1950

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**\*Flow Rate:** 15.00 GPM

**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:** GROUNDWATER

**Source Type:** GROUNDWATER

**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		SENE	9	4N	21W	RAVALLI

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

**Diversion Means:** WELL

**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			SENE	9	4N	21W	RAVALLI

**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE ASSOCIATED. THEY SHARE THE SAME WELL. 45903-00, 150766-00.

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.