

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

CLAIMANT: Bull River Bend Ranch LLC

OBJECTOR: United States of America (USDA Forest Service)

76N-0024-R-2024
76N 5290-00

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. Claim 76N 5290-00 is a domestic claim that appeared in the 76N Preliminary Decree issued on September 21, 2023. The claim received an objection from the United States Forest Service.

2. The United States objected to claim 76N 5290-00 stating:

All elements of this claim are questionable. It appears that this water right was never perfected. Aerial imagery shows that the infrastructure and cabin proposed in the Statement of Claim were never constructed. Accordingly, this claim should be terminated.

3. A status conference was held on October 9, 2024. Claimant Bull River Bend Ranch LLC did not appear at the status conference.

4. The Court set a deadline for the United States to file evidence to support its objection to claim 76N 5290-00. On November 26, 2024, the United States filed a response explaining that the claimed point of diversion for claim 76N 5290-00 in the NESWSE of Section 11, T27N, R33W is located on federal land in the Kootenai National Forest. According to the Forest Service, the claimant does not have authorization to maintain a diversion at the claimed location. Additionally, the Forest Service explains that the map attached to the statement of claim filing shows a “proposed” pipeline across the federal land to reach a cabin site, but it is not clear that the pipeline was ever actually constructed. According to the Forest Service, there is no evidence that the pipeline was ever authorized or constructed.

In support of its position, the Forest Service provides a map showing land ownership for the property on which the point of diversion and place of use are located and a Declaration from Thor Burbach, a Forest Service Hydrologist. Burbach states that to the extent that this claim was ever put to beneficial use, there was no diversion from Forest Service land in the NESWSE of Section 11, T27N, R33W. Additionally, Burbach notes that structures that were within the place of use for this claim were removed sometime between 2014 and 2020.

5. A Show Cause Filing Deadline was set for the claimants to respond to the United States’ objection and its evidence filed in support. The Order stated that if nothing

was filed by the deadline provided below, the Court would conclude that the claimant agrees that claim 76N 5290-00 should be dismissed from the adjudication. Nothing was filed by the deadline.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing 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.

The evidence provided by the United States overcomes the prima facie status of claim 76N 5290-00. The declaration of Thor Burbach indicates that the proposed pipeline referenced in the map attached to the statement of claim was not constructed and the water right was therefore not perfected.

3. If a claimant fails to comply with an Order issued by the Water Court in its review of issue remarks, including an Order issued by a Water Master appointed by the Court, the Court on its own initiative may amend or dismiss the claim to conform with information in the claim file or information obtained as part of the adjudication process. Section 85-2-248(9) MCA. The claimant failed to attend a required status conference, did not respond to court filing deadlines for status reports, and did not respond to a show cause filing deadline. The information before the court indicates that claim 76N 5290-00 should be dismissed from the adjudication.

RECOMMENDATIONS

1. Claim 76N 5290-00 should be dismissed from the adjudication.

A Post Decree Abstract of Water Right Claim is served with this Report to confirm that the claim has been dismissed from the statewide adjudication.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

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

Water Right Number: **76N 5290-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: BULL RIVER BEND RANCH LLC
 PO BOX 3476
 HOMER, AK 99603-3476

Priority Date:

Type of Historical Right:

Purpose (Use): DOMESTIC

Flow Rate:

Volume:

Source Name: SPRING, UNNAMED TRIBUTARY OF CABINET GORGE RESERVOIR

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.