

Montana Water Court  
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**FILED**  
04/07/2025  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
76N-0053-R-2024  
Weisz, Madeleine  
4.00

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

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CLAIMANT: United States of America Department  
Agriculture Forest Service

**76N-0053-R-2024**  
76N 52584-00

**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 52584-00 is a stock water right owned by the United States Department of Agriculture Forest Service. It appeared in the 76N Preliminary Decree issued September 21, 2023 with an issue remark from the Department of Natural Resources stating:

THE SOURCE NAME APPEARS TO BE INCORRECT. THE SOURCE NAME APPEARS TO BE SPRING, UNNAMED TRIBUTARY OF HUGO CREEK.

2. A filing deadline was set for the United States to address the issue remark. On February 3, 2025, the United States filed a Response indicating that it agrees with the DNRC issue remark and proposes that the source name on the abstract be changed to Spring, Unnamed Tributary of Hugo Creek. The United States provides a map in support depicting the point of diversion and place of use for claim 76N 52584-00. The map corroborates that the source name should be corrected to Spring, Unnamed Tributary of Hugo Creek.

### **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.

The information in the claim file and provided by the claimant is sufficient to overcome the prima facie status of the claim. Claim 76N 52584-00 should be modified to correct the source name to Spring, Unnamed Tributary of Hugo Creek.

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. The issue remark on

claim 76N 52584-00 was placed on the claim to ensure that the correct source name is listed on the claim abstract. The United States agreed with the information in the issue remark. The source name should be corrected to Spring, Unnamed Tributary of Hugo Creek, and the issue remark should be removed from the claim.

### RECOMMENDATIONS

1. Claim 76N 52584-00 should be modified as provided above.
2. The issue remark should be removed from claim 76N 52584-00.

A Post Decree Abstract of Water Right Claim is 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 Electronic Mail:**

##### ***Last Order:***

**United States of America  
Dept. of Agriculture Forst Service  
Water Rights Program Manager, Northern Region  
26 Fort Missoula Road  
Missoula, MT 59804-7203  
406-791-7740  
[Montanabasins.enrd@usdoj.gov](mailto:Montanabasins.enrd@usdoj.gov)**

#### **Service via Electronic Mail:**

**Alexa Penalosa, Trial Attorney  
US Dept of Justice, ENRD-NRS  
PO Box 7611  
Washington, DC 20044-7611  
[Alexa.Penalosa@usdoj.gov](mailto:Alexa.Penalosa@usdoj.gov)  
[MontanaBasins.ENRD@usdoj.gov](mailto:MontanaBasins.ENRD@usdoj.gov)**

**Note: Service List Updated 4-1-2025**

\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Datavol)\Share\WC-BASIN FOLDERS\76N PD\Cases\53R\MW 76N-0053-R-2024 MR 4-1-2025 rr.docx

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

**Water Right Number:** 76N 52584-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804-7203

**Priority Date:** JUNE 1, 1915

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**\*Volume:** THIS 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:** SPRING, UNNAMED TRIBUTARY OF HUGO 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		NENESE	24	19N	25W	SANDERS

**Period of Diversion:** JUNE 1 TO OCTOBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JUNE 1 TO OCTOBER 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			NENESE	24	19N	25W	SANDERS