

Montana Water Court
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FILED
04/29/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
76N-0074-R-2025
Weisz, Madeleine
3.00

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

CLAIMANT: Jimmie D. Allison Jr.

76N-0074-R-2025
76N 118286-00

NOTICE OF FILING OF AMENDED 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.

AMENDED MASTER'S REPORT

FINDINGS OF FACT

1. This Master's Report Amends the Master's Report issued April 14, 2025. The Master's Report is amended to correct the reference identifying the colloquial name of the spring from "Sanders Spring" to "Sandra's Spring" based on a phone conversation with claimant Jimmie D. Allison Jr. on April 22, 2025. No other portion of the April 14, 2025 Master's Report is modified.

2. Claim 76N 118286-00 is a stock water right owned by Jimmie D. Allison Jr. 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.

3. In the February 20, 2025 Order Consolidating Case, the Court explained that in 1995, the Department of Natural Resources and Conservation (DNRC) filed a Memorandum with the Water Court informing the Court that the United States Board on Geographic Names named an unnamed tributary in the Lolo National Forest "Hugo Creek."

The Water Court issued an Order on February 3, 2010, modifying the source name for claim 76N 118286-00 from "Spring, Unnamed Tributary of McLaughlin Creek" to "Hugo Creek." Because claim 76N 118286-00 is for a developed spring, it appears the Court erred when it changed the name of the source. Instead, it should have been changed to: "Spring, Unnamed Tributary of Hugo Creek." Developed springs are considered groundwater as opposed to surface water, so if the source name is corrected as suggested, the source type should also be corrected to reflect groundwater.

4. A filing deadline was set for the Claimant to indicate whether he agreed with the issue remark stating that the source name should be changed to Spring, Unnamed Tributary of Hugo Creek. On February 26, 2025 Claimant Jimmie D. Allison Jr. contacted the Court and indicated that the spring associated with claim 76N 118286-00 is a Tributary to Hugo Creek and that it has been known as Sandra's Spring.

Accordingly, the source name for claim 76N 118286-00 should be modified to “Spring, Unnamed Tributary of Hugo Creek,” a source information remark should be added to the claim clarifying that the source is “also known as Sandra’s Spring,” and the source type should be modified from surface water to groundwater.

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 118286-00 should be modified to correct the source name to Spring, Unnamed Tributary of Hugo Creek. A source name information remark should be added to the claim to clarify the spring is also known as Sandra’s Spring. The type of water right should be modified from surface water to groundwater.

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 118286-00 was placed on the claim to ensure that the correct source name is listed on the claim abstract. The Claimant 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 118286-00 should be modified as provided above.
2. The issue remark should be removed from claim 76N 118286-00.

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 USPS Mail:

Jimmie D. Allison Jr.
6683 MT HWY 200 W
Plains, MT 59859-9216

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

Water Right Number: 76N 118286-00 STATEMENT OF CLAIM
Version: 5 -- POST DECREE
Status: ACTIVE

Owners: JIMMIE D ALLISON JR
6683 MT HWY 200 W
PLAINS, MT 59859-9216

Priority Date: DECEMBER 31, 1900

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 3.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF HUGO CREEK

Source Type: GROUNDWATER
ALSO KNOWN AS SANDRA'S SPRING

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		SWNENW	23	19N	25W	SANDERS	
Period of Diversion:		JANUARY 1 TO DECEMBER 31					
Diversion Means:		FLOWING					
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			SWNENW	23	19N	25W	SANDERS