

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

CLAIMANTS: Janet D. Aumiller; John S. Aumiller

76N-0082-R-2025
76N 30757-00

OBJECTOR: E.L. Johnson & Sons, Inc.

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 30757-00 is an irrigation claim for 1.07 cfs owned by Janet Aumiller and John Aumiller. The claim was consolidated into this case to address the DNRC issue remark on the claim. The claim did not receive any objections or notices of intent to appear.

2. The issue remark appearing on the claim states:

A LATE OBJECTION HAS BEEN FILED TO THE PRIORITY DATE AND POINT OF DIVERSION OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

The late objection was filed by E.L. Johnson & Sons, Inc. on February 21, 1995, and states:

The point of diversion should be changed from NE SE NE of Section 24 to Government Lot 2, NW SE NE, Section 24, T 20 N, R 26 W, Sanders County. As a result of a recent boundary survey, the water right owner and objector, E. L. Johnson & Sons, Inc., discovered that the point of diversion was incorrectly identified in the original claim and on the temporary preliminary decree. See attached exhibits and maps.

A filing deadline was set for the claimants to indicate whether they agree with the information in the late objection stating that the point of diversion should be modified to Government Lot 2, NWSENE, Section 24, T20N, R26W. A filing deadline was also set for the late objector, E.L. Johnson & Sons, Inc., to indicate whether it would pursue its objection to claim 76N 30757-00.

3. On March 18, 2025, John Aumiller filed a response indicating that the Aumiller's agree with the information in the late objection and agree that the point of diversion should be modified to Government Lot 2, NWSENE, Section 24, T20N, R26W.

4. On April 1, 2025, Attorney Elizabeth W. Erickson and the law firm of Worden Thane P.C. filed a Motion to Withdraw as counsel for E.L. Johnson & Sons, Inc. The Motion explains that W. Carl Mendenhall filed an objection on behalf of E.L. Johnson & Sons, Inc on February 21, 1991 but that W. Carl Mendenhall is now retired, and Worden Thane P.C. no longer represents the Objector. The Motion goes on to report

that E.L. Johnson & Sons, Inc. filed its Articles of Dissolution with the Montana Secretary of State on February 27, 2023, with “Company no longer in business” as the stated reason for the filing of the dissolution.

5. The information before the Court indicates that the point of diversion should be modified to Government Lot 2, NWSENE, Section 24, T20N, R26W pursuant to the information in the late objection and the late objection should be considered resolved. The issue remark should be removed from claim 76N 30757-00.

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 the statement of agreement from the current claimant is sufficient to overcome the prima facie status of claim 76N 30757-00. The point of diversion should be modified to Government Lot 2, NWSENE, Section 24, T20N, R26W.

2. All issue remarks to claims that are not resolved through the filing of an objection must be resolved pursuant to § 85-2-248, MCA. § 85-2-248(2), MCA. However, 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 issue remark appearing on claim 76N 30757-00 is for the purpose of providing notice of the objection filed against the claim after the close of the Basin 76N Temporary Preliminary Decree Objection Period. The late objection has been addressed. The issue remark should be removed from the claim abstract.

RECOMMENDATIONS

1. The point of diversion for claim 76N 30757-00 should be decreed as Government Lot 2, NWSENE, Section 24, T20N, R26W.
2. The issue remark should be removed from claim 76N 30757-00.

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:

John S. Aumiller
Janet D. Aumiller
~~PO Box 1609~~
~~Trout Creek, MT 59874-1609~~
635 Parksville Crosspike
Danville, KY 40422-9719

Service via Electronic Mail:

Last Order:
Carl Mendenhall
Worden Thane P.C.
PO Box 4747
Missoula, MT 59806
(406) 721-3400
carlmendenhall@gmail.com
(atty for E.L. Johnson & Sons, Inc.)

Last Order:
Courtesy Copy:
Elizabeth Erickson
Worden Thane P.C.
321 W. Broadway St. Ste. 300
Missoula, MT 59802
(406) 721-3400
eerickson@wordenthane.com

Note: Service List Updated 4-17-2025

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

Water Right Number: 76N 30757-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JANET D AUMILLER
635 PARKSVILLE CROSSPIKE
DANVILLE, KY 40422

JOHN S AUMILLER
635 PARKSVILLE CROSSPIKE
DANVILLE, KY 40422-9719

Priority Date: JANUARY 31, 1955

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 1.07 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 104.60

Source Name: SOUTH BRANCH SWAMP 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	2	NWSENE	24	20N	26W	SANDERS

Period of Diversion: MAY 1 TO SEPTEMBER 15

Diversion Means: PUMP

Period of Use: MAY 1 TO SEPTEMBER 15

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	104.60		NW	19	20N	26W	SANDERS
Total:	104.60						