

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

CLAIMANTS: Susan D. Cox; United States of America
(USDA Forest Service)

76N-0029-R-2024
76N 133335-00
76N 30171512

OBJECTOR: United States of America (USDA Forest Service)

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

Claim 76N 133335-00 appeared in the Preliminary Decree for the Clark Fork River Below the Flathead River Basin (Basin 76N) issued September 21, 2023. The claim is owned by Susan D. Cox and the United States, DOA Forest Service (United States). The claim received objections from the United States.

FINDINGS OF FACT

1. Claim 76N 133335-00 was decreed as a stock water claim with points of diversion and places of use as follows:

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		N2SE	1	22N	30W	SANDERS
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		GRAVITY FLOW/DIRECT				
2		SW	1	22N	30W	SANDERS
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		GRAVITY FLOW/DIRECT				
3		E2SE	2	22N	30W	SANDERS
Period of Diversion:		JANUARY 1 TO DECEMBER 31				
Diversion Means:		GRAVITY FLOW/DIRECT				

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			S2	1	22N	30W	SANDERS
2			E2SE	2	22N	30W	SANDERS

2. The United States objected to the claim, stating:

The United States was incorrectly identified as an owner of this claim. The United States should be removed from the owner list on the abstract. A remark should be added clarifying that the points of diversion and place of use are limited to private lands.

This objection will be resolved if the above modifications are made.

3. On September 5, 2024, the Court consolidated the claim and filed an order setting a status conference in the matter. (Doc.¹ 1.00).
4. The status conference was held on October 16, 2024.
5. On October 18, 2024, the Court set a filing deadline in the matter for parties to file settlement documents or status reports by December 18, 2024. (Doc. 2.00).
6. The Court granted two extensions of the filing deadline to allow for the parties to reach agreement. (Doc. 4.00; Doc. 6.00).
7. On April 22, 2025, the United States filed a Verified Motion to Amend Water Right Claims (Motion to Amend) with the Court. (Doc. 7.00).
8. The Motion to Amend outlined the following:
 - a. Claim 76N 133335-00 should be split into separate water rights.
 - b. Claimant Susan D. Cox should be the sole owner of claim 76N 133335-00 as decreed.
 - c. Claimant United States would be the owner of claim 76N 30171512. The United States' claim would be a livestock direct from Thorne Creek claim with a point of diversion and place of use in the NENESE of Section 1, Township 22N, Range 30W, Sanders County.
9. The United States conferred with Claimant Susan D. Cox regarding the motion to amend. Claimant Susan D. Cox does not oppose the motion. (Doc. 7.00).

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.
2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.
3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

6. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remains. Rule 17(c), W.R.Adj.R.

7. The party seeking to overcome the prima facie status of a Statement of Claim bears the burden of proof; this burden also applies to a claimant's objection to his own claim. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

8. The Water Court is not bound by parties' settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

9. After the issuance of a temporary preliminary decree and close of the objection period in a basin, a claimant may amend their Statement of Claim. Section 85-2-233(6), MCA.

10. Notice is required to other water users if a motion to amend may adversely affect other water rights. Section 85-2-233(6), MCA.

11. The Court may split claims into separate claims upon parties' request at any time prior to the issuance of the final decree. Rule 26, W.R.Adj.R.

12. Remarks identifying that a division of a claim occurred may be added to the claims. Rule 26, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The United States' Motion to Amend does not adversely affect other water rights, therefore notice is not required.
2. The Motion to Amend overcomes the prima facie status of claim 76N 133335-00. The evidence in the Motion supports the split of the claim into private ownership and federal ownership, as outlined above.

RECOMMENDATIONS

1. Claim 76N 133335-00 should be split into two different water rights according to the information provided above.

A post decree abstract of the water right claim reflecting these recommendations is attached to this Report.

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 133335-00 STATEMENT OF CLAIM

Version: 3 -- SPLIT POST DECREE

Status: ACTIVE

Owners: SUSAN D COX
PO BOX 14
SELAH, WA 98942-0014

Priority Date: JULY 15, 1902

Type of Historical Right: DECREED

Purpose (Use): STOCK

Flow Rate: 8.98 GPM

***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: THORNE 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		N2SE	1	22N	30W	SANDERS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: GRAVITY FLOW/DIRECT

2		SW	1	22N	30W	SANDERS
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: GRAVITY FLOW/DIRECT

3		E2SE	2	22N	30W	SANDERS
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: GRAVITY FLOW/DIRECT

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			S2	1	22N	30W	SANDERS
2			E2SE	2	22N	30W	SANDERS

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

Water Right Number: 76N 30171512 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

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: JULY 15, 1902

Type of Historical Right: DECREED

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: THORNE 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	1	22N	30W	SANDERS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DIRECT FROM SOURCE

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			NENESE	1	22N	30W	SANDERS