

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

CLAIMANTS: Craig Me Gallaher; John M. Gallaher; Brian C.
Moore; Elizabeth Moore

OBJECTOR: United States, DOA Forest Service

76N-0039-R-2024

76N 1738-00

76N 215103-00

76N 215104-00

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. The claims in this case were consolidated to address the objections filed to the claims by the United States, DOA Forest Service.

2. Each of the claims received an objection stating that the priority date of the claims should be corrected to April 24, 1953. Claim 76N 1738-00 appeared in the 76N Preliminary Decree as a use right with an 1890 priority date. Claims 76N 215103-00 and 76N 215104-00 appeared in the Decree with a priority date of April 24, 1953.

3. In a June 12, 2025 filing, the United States withdrew its objections to claims 76N 215013-00 and 76N 215014-00. Additionally, the United States indicated that its objection to claim 76N 1738-00 would be resolved if the priority date was modified to April 24, 1953 to reflect the information in the Notice of Appropriation attached to the Statement of Claim form.

4. The United States filed a supplemental response on August 1, 2025 reporting that claimant Brian Moore had contacted the United States and informed counsel that John M. Gallaher and Elizabeth Moore are deceased. The United States indicates that Brian Moore communicated that he agreed that the priority date for claim 76N 1738-00 should be April 24, 1953.

5. Claims 76N 215103-00 and 76N 215104-00 appeared in the decree with the following DNRC issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 76N TEMPORARY PRELIMINARY DECREE ISSUED 02/28/1984.

CLAIM FILED LATE 06/10/1996. IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

These issue remarks are considered notice remarks. The remarks have served their purpose of providing notice and may be removed from the claim abstracts.

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.

2. The claimant of a water right claim may waive the advantage of § 85-2-227, MCA. If a claimant agrees to reduce or limit an element of a claim, the water court does not need to determine whether the burden of proof has been met. The water court may accept a claimant's requested reduction or limitation without further presentation of evidence. Rule 17(c), W.R.Adj.R.

3. The evidence before the Court is sufficient to establish that the priority date for claim 76N 1738-00 should be modified to April 24, 1953.

4. 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 remarks appearing on claims 76N 215103-00 and 76N 215104-00 do not overcome the prima facie status of the claims. The issue remarks have served their purpose of providing notice and should be removed from the claim abstracts.

RECOMMENDATIONS

1. The priority date for claim 76N 1738-00 should be modified to April 24, 1953.

2. The issue remarks should be removed from claims 76N 215103-00 and 76N 215104-00.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the modifications have been made in the state's centralized database.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Craig Me Gallaher
2313 Doral Ave.
Albert Lea, MN 56007

John M. Gallaher
1227 Blue Slide Road
Thompson Falls, MT 59873

Brian C. Moore
Elizabeth Moore
1227 Blue Slide Road
Thompson Falls, MT 59873

Service via Electronic Mail:

Alexa Penalosa, Trial Attorney
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MontanaBasins.ENRD@usdoj.gov

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

Water Right Number: 76N 1738-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CRAIG ME GALLAHER
2313 DORAL AVE
ALBERT LEA, MN 56007

Priority Date: APRIL 24, 1953

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 1.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: DEEP 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		SWSNW	15	23N	30W	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			NENENE	21	23N	30W	SANDERS

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

1738-00 215103-00 215104-00

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

Water Right Number: 76N 215103-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners:

CRAIG ME GALLAHER
2313 DORAL AVE
ALBERT LEA, MN 56007

JOHN M GALLAHER
1227 BLUE SLIDE RD
THOMPSON FALLS, MT 59873

BRIAN C MOORE
1227 BLUE SLIDE RD
THOMPSON FALLS, MT 59873-9470

ELIZABETH MOORE
1227 BLUE SLIDE RD
THOMPSON FALLS, MT 59873

***Priority Date:** APRIL 24, 1953

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 06/10/1996 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 5.00 GPM

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING 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: DEEP 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		SWSNW	15	23N	30W	SANDERS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DIVERSION DAM

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			NENENE	21	23N	30W	SANDERS

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

1738-00 215103-00 215104-00

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

Water Right Number: 76N 215104-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners:

CRAIG ME GALLAHER
2313 DORAL AVE
ALBERT LEA, MN 56007

JOHN M GALLAHER
1227 BLUE SLIDE RD
THOMPSON FALLS, MT 59873

BRIAN C MOORE
1227 BLUE SLIDE RD
THOMPSON FALLS, MT 59873-9470

ELIZABETH MOORE
1227 BLUE SLIDE RD
THOMPSON FALLS, MT 59873

***Priority Date:** APRIL 24, 1953

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 06/10/1996 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 10.00 GPM

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

Climatic Area: 3 - MODERATE

Maximum Acres: 2.00

Source Name: DEEP 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		SWSNW	15	23N	30W	SANDERS

Period of Diversion: MAY 1 TO SEPTEMBER 15

Diversion Means: DIVERSION DAM

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	2.00		NENENE	21	23N	30W	SANDERS
Total:	2.00						

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

1738-00 215103-00 215104-00