

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

CLAIMANTS: Leroy K. Lueb; Willina C. Lueb

76N-0047-R-2024
76N 133358-00

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 133358-00 appeared in the Preliminary Decree for the Clark Fork River Below the Flathead River Basin (Basin 76N) issued September 21, 2023. Leroy K. Lueb and Willina C. Lueb own the claim. The claim received objections from the United States, DOA Forest Service (United States). The claim did not receive issue remarks.

FINDINGS OF FACT

1. Claim 76N 133358-00 was decreed as a domestic claim that diverts water from Goat Creek in the S2NWSW of Section 5, T21N, R28W, Sanders County. The claim was decreed for use on 1.00 acres in the S2S2SW of Section 5, T21N, R28W, Sanders County.

2. The United States objected to the point of diversion, stating:

The point of diversion, as described, incorrectly includes National Forest System land. Point of Diversion No. 1 should be corrected to SWSW Section 5, Township 21N, Range 28W, Sanders County.

3. On April 22, 2025, the United States filed a Stipulation to Resolve Objections (Stipulation) entered into between the United States and Claimants. (Doc. ¹ 5.00). The Stipulation proposed minor clarifying modifications to the place of use. The requested modifications resolve the United States' objection.

4. The place of use for the claim should be amended as follows:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1.00		<u>SESWSW</u>	<u>S2S2SW</u>	5	21N	28W	SANDERS
Total:	1.00							

b. The following information remark should be placed on the claim abstract:

**THE POINT OF DIVERSION AND PLACE OF USE ARE
LOCATED ENTIRELY ON PRIVATE LAND.**

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.

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

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.

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.

CONCLUSION OF LAW

1. The Stipulation entered into between the United States and Claimants overcomes the prima facie status of claim 76N 133358-00. Evidence in the Stipulation suggests that the place of use modification should be made and the information regarding the ownership of the property on which the point of diversion and place of use are located should be added.

RECOMMENDATIONS

1. Claim 76N 133358-00 should be amended to reflect the place of use agreed upon in the Stipulation:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1.00		<u>SE</u>	<u>SW</u>	<u>S2S2</u>	<u>SW</u>	
			5	21N	28W		SANDERS
Total:	1.00						

2. The following information remark should be added to the claim abstract for claim 76N 133358-00:

**THE POINT OF DIVERSION AND PLACE OF USE ARE
LOCATED ENTIRELY ON PRIVATE LAND.**

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 133358-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: LEROY K LUEB
188 THOMPSON RIVER RD
THOMPSON FALLS, MT 59873-9422

WILLINA C LUEB
188 THOMPSON RIVER RD
THOMPSON FALLS, MT 59873-9422

Priority Date: SEPTEMBER 20, 1913
Type of Historical Right: USE
Purpose (Use): DOMESTIC
Flow Rate: 5.00 GPM
Volume: 1.50 AC-FT
Households: 1
Maximum Acres: 1.00
Source Name: GOAT 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		S2NWSW	5	21N	28W	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	1.00		SESWSW	5	21N	28W	SANDERS
Total:	1.00						

Remarks:
THE POINT OF DIVERSION AND PLACE OF USE ARE LOCATED ENTIRELY ON PRIVATE LAND.