

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
1-800-624-3270  
(406) 586-4364  
watercourt@mt.gov

**FILED**  
01/08/2025  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
76N-0020-R-2024  
Weisz, Madeleine  
5.00

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

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CLAIMANTS: Matthew Ames; Paula Ames; Copper  
Creek Conserve

**76N-0020-R-2024**  
76N 118291-00

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**  
**FINDINGS OF FACT**

1. Claim 76N 118291-00 appeared in the 76N Preliminary Decree. It received an objection from the United States Department of Agriculture Forest Service (the United States) and an issue remark from the Department of Natural Resources (DNRC).

2. The owners of claim 76N 118291-00 were listed in the Preliminary Decree as Matthew Ames, Paula Ames, Copper Creek Conserve, and Judy A. Evans. During the first status conference, claimant Matthew Ames explained that he and Paula Ames purchased the property from Judy A. Evans and that she should no longer be listed as an owner of the claim. In the claim file is an August 5, 1991 Transfer Certificate that confirms that Judy Evans is no longer an owner of the claim. The ownership information will be updated accordingly.

3. On October 11, 2024, the parties filed a Stipulation to resolve the United States’ objection. In the Stipulation, the parties agree that the flow rate for claim 76N 118291-00 should be reduced from 2.50 cfs to 20 gpm.

3. The Stipulation did not address the issue remark appearing on claim 76N 118291-00. The issue remark states that “the volume is missing.” On the statement of claim form, the original claimant wrote:

**10. Volume claimed:** no storage acre-feet

4. Claim 76N 118291-00 is a power generation claim. There is a volume information remark on the claim stating, “the use of this water appears to be largely nonconsumptive.” Accordingly, to resolve the volume issue remark, the court proposed adding a standard volume information remark stating:

THE VOLUME IS LIMITED TO THE MINIMUM AMOUNTS NECESSARY TO SUSTAIN THIS PURPOSE. THIS RIGHT SHALL CONTINUE TO BE UTILIZED IN ACCORDANCE WITH HISTORICAL PRACTICES.

The parties were given an opportunity to respond to the proposed addition of an information remark as a way to resolve the volume issue remark appearing on claim 76N 118291-00. The Order Setting Filing Deadline stated that if nothing was filed by the deadline, the Court would conclude that the parties agreed with the suggested issue remark resolution. Nothing was filed by the deadline.

### 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. 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.

2. The claimant of a water right claim may waive the advantage of § 85-2-227, MCA by requesting a reduction or limitation of an element of a water right claim. The water court may accept a claimant's requested reduction or limitation without further presentation of evidence unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R. The requested reduction to the flow rate for claim 76N 118291-00 should be accepted without further presentation of evidence.

3. Settlement agreements are subject to review and approval of the Water Court. Rule 17(a), W.R.Adj.R. The settlement documentation in this Case should be accepted by the Court.

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. Based on the information before the Court, a quantified volume is not required to administer claim 76N 118291-00 and the issue remark may be resolved by adding a standard volume information remark to the claim abstract. The volume information remark should be added to the claim and the issue remark should be removed.

## RECOMMENDATIONS

1. Claim 76N 118291-00 should be modified as provided above.
2. The issue remark should be removed from the claim abstract.

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:**

Matthew Ames  
Paula Ames  
PO Box 97  
Bayview, ID 83803-0097

Copper Creek Conserve  
316 9<sup>th</sup> Ave. SW  
Rochester, MN 55902  
*(Mail Undeliverable)*

#### **Service via Electronic Mail:**

Kate Laubach, Trial Attorney  
Alexa Penalosa, Trial Attorney  
US Dept of Justice, ENRD-NRS  
PO Box 7611  
Washington, DC 20044-7611  
(202) 305-8568  
[Katharine.laubach@usdoj.gov](mailto:Katharine.laubach@usdoj.gov)  
[Alexa.Penalosa@usdoj.gov](mailto:Alexa.Penalosa@usdoj.gov)  
[MontanaBasins.ENRD@usdoj.gov](mailto:MontanaBasins.ENRD@usdoj.gov)

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

**Water Right Number:** 76N 118291-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MATTHEW AMES  
PO BOX 97  
BAYVIEW, ID 83803-0097

PAULA AMES  
PO BOX 97  
BAYVIEW, ID 83803-0097

COPPER CREEK CONSERVE  
316 9TH AVE SW  
ROCHESTER, MN 55902

**Priority Date:** MAY 2, 1972

**Type of Historical Right:** FILED

**Purpose (Use):** POWER GENERATION

**Flow Rate:** 20.00 GPM

**Volume:**

THE VOLUME IS LIMITED TO THE MINIMUM AMOUNTS NECESSARY TO SUSTAIN THIS PURPOSE. THIS RIGHT SHALL CONTINUE TO BE UTILIZED IN ACCORDANCE WITH HISTORICAL PRACTICES.

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

**Source Name:** UNNAMED TRIBUTARY OF COPPER GULCH

**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		SWNWNE	20	27N	32W	SANDERS

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** HEADGATE

**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			NWSWNW	20	27N	32W	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.

118289-00      118291-00      118292-00      118293-00