

Montana Water Court
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FILED
01/27/2025
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CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
76N-0022-R-2024
Weisz, Madeleine
4.00

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

CLAIMANTS: Valerie A. Borgmann; Walter A. Borgmann

76N-0022-R-2024
76N 216212-00

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 216212-00 appeared in the Basin 76N Preliminary Decree issued November 14, 2024. It received an objection from the United States Forest Service.

2. Claim 76N 216212-00 received a DNRC issue remark stating:

THE PRIORITY DATE IS MISSING.

The Court is required by statute to address and resolve all DNRC issue remarks appearing on claims.

3. A status conference was held on October 9, 2024, to discuss the issues related to claim 76N 216212-00. The claimants Valerie Borgmann and Walter Borgmann did not appear. A filing deadline was set for the Borgmanns to respond to the United States' Objection and to address the issue remark appearing on the claim. Nothing was filed by the deadline.

4. On December 6, 2024, the Court issued a Show Cause Order setting a final deadline for the claimants to provide evidence that claim 76N 216212-00 was put to use prior to July 1, 1973. The Order explained that if water was not put to use prior to July 1, 1973, it is not considered an existing water right and would need to be dismissed from the adjudication. Nothing was filed by the deadline. Claim 76N 216212-00 should be dismissed from the adjudication.

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. However, only water uses put to use prior to July 1, 1973 are considered existing water rights. § 85-2-102(13), MCA.

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. Priority Date is an essential element of a water right. § 85-2-234(7)(d), MCA. There is no evidence before the Court to show that claim 76N 216212-00 was put to use prior to July 1, 1973.

3. If a claimant fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Sanctions applied against claimants may include termination of the claim; or modification of the claim to conform with data provided by the department, information obtained by the court, or information included in an objection. Rule 22, W.R.Adj.R. The Claimants failed to attend to a scheduled status conference, did not respond to an initial filing deadline, and failed to respond to a show cause order. There is no evidence to support that claim 76N 216212-00 was put to use prior to July 1, 1973. The claim should be dismissed from the adjudication.

RECOMMENDATIONS

1. Claim 76N 216212-00 should be dismissed from the adjudication.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the claim has been dismissed.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

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

Water Right Number: 76N 216212-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Late Claim: B

Owners: VALERIE A BORGMANN
PO BOX 1509
THOMPSON FALLS, MT 59873-1509

WALTER A BORGMANN
PO BOX 1509
THOMPSON FALLS, MT 59873-1509

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: CLEAR CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.