

Montana Water Court
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FILED
01/10/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
76N-0023-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: Clinton J. Brown; George A. Brown; George C. Brown; John M. Brown; Webb S. Brown; Zane N. Brown; Browns Gulch Water Group; Twila G. Nygaard

76N-0023-R-2024
76N 46804-00
76N 46805-00

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. Claims 76N 46804-00 and 76N 46805-00 appeared in the Basin 76N Preliminary Decree issued September 21, 2023. The claims received objections from the United States of America (USDA Forest Service)

2. On December 10, 2024, the United States withdrew its objection to claims 76N 46804-00 and 76N 46805-00.

3. Both claims received DNRC notice issue remarks stating:

THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

THE VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND VOLUME REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

The issue remarks have served their purpose of providing notice and should be removed from the claim.

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. No evidence was presented to overcome the prima facie status of the claims in this case.

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. However, the requirement to resolve issue remarks does not eliminate the prima facie status granted to water rights, nor does it change the burden of proof required to modify or invalidate a claim. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015. The issue remarks appearing on claims 76N 46804-00 and 76N 46805-00 do not overcome the prima facie status of the claims and should be removed.

RECOMMENDATIONS

1. The issue remarks should be removed from claims 76N 46804-00 and 76N 46805-00.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the remarks have been removed.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

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Note: Caption and Service List Updated 1-6-2025

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

Water Right Number: 76N 46804-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

CLINTON J BROWN
4050 REMINGTON STREET
EAST HELENA, MT 59635-3462

GEORGE A BROWN
375 OLD HWY
TROUT CREEK, MT 59874

GEORGE C BROWN
111 WANESS RD
TROUT CREEK, MT 59874

JOHN M BROWN
11677 YAAK RIVER RD
TROY, MT 59935

WEBB S BROWN
160 SWAMP CREEK RD
TROUT CREEK, MT 59874

ZANE N BROWN
2410 MT HWY 200
TROUT CREEK, MT 59874-9575

TWILA G NYGAARD
235 SWAMP CREEK RD
TROUT CREEK, MT 59874

BROWNS GULCH WATER GROUP
88 OLD HWY
TROUT CREEK, MT 59874

Priority Date: OCTOBER 3, 1972

Type of Historical Right: FILED

Purpose (Use): FISH AND WILDLIFE

Flow Rate: 40.00 GPM

Volume: 64.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: UNNAMED TRIBUTARY OF TWENTY PEAK GULCH

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID **Govt Lot** **Qtr Sec** **Sec** **Twp** **Rge** **County**

1 NESWNW 28 25N 31W 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			NENENE	30	25N	31W	SANDERS
2			SWSW	26	25N	32W	SANDERS
3			SWNE	35	25N	32W	SANDERS
4			SENW	35	25N	32W	SANDERS

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

Water Right Number: 76N 46805-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

CLINTON J BROWN
4050 REMINGTON STREET
EAST HELENA, MT 59635-3462

GEORGE A BROWN
375 OLD HWY
TROUT CREEK, MT 59874

GEORGE C BROWN
111 WANESS RD
TROUT CREEK, MT 59874

JOHN M BROWN
11677 YAAK RIVER RD
TROY, MT 59935

WEBB S BROWN
160 SWAMP CREEK RD
TROUT CREEK, MT 59874

ZANE N BROWN
2410 MT HWY 200
TROUT CREEK, MT 59874-9575

TWILA G NYGAARD
235 SWAMP CREEK RD
TROUT CREEK, MT 59874

BROWNS GULCH WATER GROUP
88 OLD HWY
TROUT CREEK, MT 59874

Priority Date: APRIL 17, 1972

Type of Historical Right: FILED

Purpose (Use): FISH AND WILDLIFE

Flow Rate: 40.00 GPM

Volume: 64.00 AC-FT

THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

Source Name: TWENTY PEAK GULCH

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID Govt Lot Qtr Sec Sec Twp Rge County

1 SESWNW 28 25N 31W 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			NENENE	30	25N	31W	SANDERS
2			SWSW	26	25N	32W	SANDERS
3			SWNE	35	25N	32W	SANDERS
4			SENW	35	25N	32W	SANDERS