

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

\*\*\*\*\*

CLAIMANTS: Mary Danno; Robert Danno; Daniel L. Evans;  
Karen R. Evans; Katherine Wolfe

**76N-0030-R-2024**  
76N 133312-00

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 133312-00 appeared in the Preliminary Decree for the Clark Fork River Below the Flathead River Basin (Basin 76N) issued on September 21, 2023. It received objections from the United States, DOA Forest Service (United States). The

claims also received issue remarks. Issue remarks are notations identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

### FINDINGS OF FACT

1. Claim 76N 133312-00 was decreed as a sprinkler irrigation claim for use on 248.00 acres with the following points of diversion and places of use:

**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		NWSENW	8	22N	30W	SANDERS
<b>Source Name:</b>		LITTLE BEAVER CREEK				
<b>Period of Diversion:</b>		JUNE 1 TO OCTOBER 1				
<b>Diversion Means:</b>		DAM				
2		SENWSW	8	22N	30W	SANDERS
<b>Source Name:</b>		LITTLE BEAVER CREEK				
<b>Period of Diversion:</b>		JUNE 1 TO OCTOBER 1				
<b>Diversion Means:</b>		DAM				
3		SWNENW	18	22N	30W	SANDERS
<b>Source Name:</b>		LITTLE BEAVER CREEK				
<b>Period of Diversion:</b>		JUNE 1 TO OCTOBER 1				
<b>Diversion Means:</b>		DAM				
4		NESENW	13	22N	31W	SANDERS
<b>Source Name:</b>		LITTLE BEAVER CREEK				
<b>Period of Diversion:</b>		JUNE 1 TO OCTOBER 1				
<b>Diversion Means:</b>		DAM				
5		NWSWSW	8	22N	30W	SANDERS
<b>Source Name:</b>		LITTLE BEAVER CREEK				
<b>Period of Diversion:</b>		JUNE 1 TO OCTOBER 1				
<b>Diversion Means:</b>		DAM				
<b>Period of Use:</b>		JUNE 1 TO OCTOBER 1				

**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	84.00		N2N2	18	22N	30W	SANDERS
2	21.00		SESE	7	22N	30W	SANDERS
3	85.00		SW	8	22N	30W	SANDERS
4	35.00		SENW	8	22N	30W	SANDERS
5	20.00		E2NE	13	22N	31W	SANDERS
6	3.00		NWNWNW	17	22N	30W	SANDERS
<b>Total:</b>	<u>248.00</u>						

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

Point of Diversion No. 4 and Place of Use No. 6, as described, incorrectly include National Forest System land. Claimants do not have a special use permit to divert or use water on federal lands. The Survey map indicates that the means of diversion was a pump. Accordingly, Point of Diversion No. 4 and Place of Use No. 6 should be removed.

3. On January 2, 2025, the United States filed evidence supporting their objections. (Doc.<sup>1</sup> 4.00).

4. In their Response, the United States provided evidence in the form of a map outlining where the federally owned land was in relation to POD 4 and POU 6. To resolve their objection, the United States proposed the following:

Claimants do not have a special use permit to divert or use water on federal lands.

Accordingly, the legal land description for Point of Diversion ID No. 4 should be corrected to **NWSENE** Section 13, Township 22N, Range 31W, in Sanders County. Place of Use ID No. 6 should be removed and the total acres for Place of Use should be reduced to **245** acres. In addition, a clarifying remark should be added to the abstract to reflect that the points of diversion and places of use are entirely on private land. The proposed abstract, attached as **Exhibit 1**, and map, attached as **Exhibit 2**, reflect these modifications. The proposed amendments, if implemented, would resolve the United States' objection to the Claim.

5. On April 11, 2025, the United States filed a Stipulation to Resolve Objections (Stipulation) entered into by both Claimants and Objector. (Doc. 8.00). The Stipulation between the parties proposed to the following:

- a. The point of diversion decreed as being in the NESENW of Section 13, T22N, R31W, Sanders County should be corrected to the NWSENE of Section 13, Township 22N, Range 30W, Sanders County.
- b. Remove the 3.00-acre place of use in the NWNWNW of Section 17, T22N, R30W, Sanders County.

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

c. Reduce the maximum acres irrigated to 245.00.

6. The claim also received the following notice-type issue remark:

POINT OF DIVERSION AND MEANS OF DIVERSION WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

7. The issue remark identifies elements modified as a result of DNRC review pursuant to Montana Water Court reexamination orders. The remark indicates that if no objections are filed, the elements of the claim will remain as they appear on the abstract and the remarks will be removed.

### 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.

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. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. 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.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is

overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

8. 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 remark remains. Rule 17(c), W.R.Adj.R.

9. 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.

10. 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.

#### CONCLUSIONS OF LAW

1. The United States's objection overcomes the prima facie status of claim 76N 133312-00. The evidence show the historical location of the dam decreed as being in the NESENW of Section 13, T22N, R31W, Sanders County is in the NWSENE of Section 13, T22N, R31W, Sanders County.

2. The Stipulation's proposed modifications to the place of use and maximum acres are reductions.

3. The notice-type issue remark in Findings of Fact No. 6 served its notice purpose.

#### RECOMMENDATIONS

1. The point of diversion should be modified as follows:

4                                    NWSENE ~~NESENW~~    13    22N   31W   SANDERS

2. The 3.00-acre place of use in the NWNWNW of Section 17, T22N, R30W, Sanders County should be removed.

3. The maximum acres should be reduced to 245.00 acres.

4. The issue remarks should be removed from the claim abstract.

A post decree abstract of the water right claim reflecting these recommendations is attached to this Report.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via Electronic Mail:**

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

**Water Right Number:** 76N 133312-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MARY DANNO  
274 LITTLE BEAVER CREEK RD  
TROUT CREEK, MT 59874-9670

ROBERT DANNO  
274 LITTLE BEAVER CREEK RD  
TROUT CREEK, MT 59874-9670

DANIEL L EVANS  
280 LITTLE BEAVER CREEK RD  
TROUT CREEK, MT 59874-9604

KAREN R EVANS  
280 LITTLE BEAVER CREEK RD  
TROUT CREEK, MT 59874-9604

KATHERINE WOLFE  
PO BOX 870  
TONASKET, WA 98855

**Priority Date:** APRIL 14, 1924

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER

**Flow Rate:** 9.40 CFS

**Volume:** 496.00 AC-FT

**Climatic Area:** 2 - MODERATELY HIGH

**Maximum Acres:** 245.00

**Source Name:** LITTLE BEAVER 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		NWSENW	8	22N	30W	SANDERS
<b>Period of Diversion:</b>	JUNE 1 TO OCTOBER 1					
<b>Diversion Means:</b>	DAM					
2		SENWSW	8	22N	30W	SANDERS
<b>Period of Diversion:</b>	JUNE 1 TO OCTOBER 1					
<b>Diversion Means:</b>	DAM					
3		SWNENW	18	22N	30W	SANDERS

Period of Diversion:

JUNE 1 TO OCTOBER 1

Diversion Means:

DAM

4

NWSENE1322N31WSANDERS

Period of Diversion:

JUNE 1 TO OCTOBER 1

Diversion Means:

DAM

5

NWSWSW822N30WSANDERS

Period of Diversion:

JUNE 1 TO OCTOBER 1

Diversion Means:

DAM

Period of Use:

JUNE 1 TO OCTOBER 1

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	84.00		N2N2	18	22N	30W	SANDERS
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3	85.00		SW	8	22N	30W	SANDERS
4	35.00		SENW	8	22N	30W	SANDERS
5	20.00		E2NE	13	22N	31W	SANDERS
Total:	245.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

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