

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

CLAIMANT: Jeremy F. Lunnen

76N-0048-R-2024
76N 30117172

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 30117172 appeared in the Preliminary Decree for the Clark Fork River Below the Flathead River Basin (Basin 76N) issued September 21, 2023. The claim is

owned by Jeremy F. Lunnen. The United States, DOA Forest Service (United States) objected to the claim. The claim received an issue remark. 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 30117172 was decreed as a domestic claim for use on 1.00 acres with the following point of diversion:

***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		SWNE	8	26N	34W	SANDERS

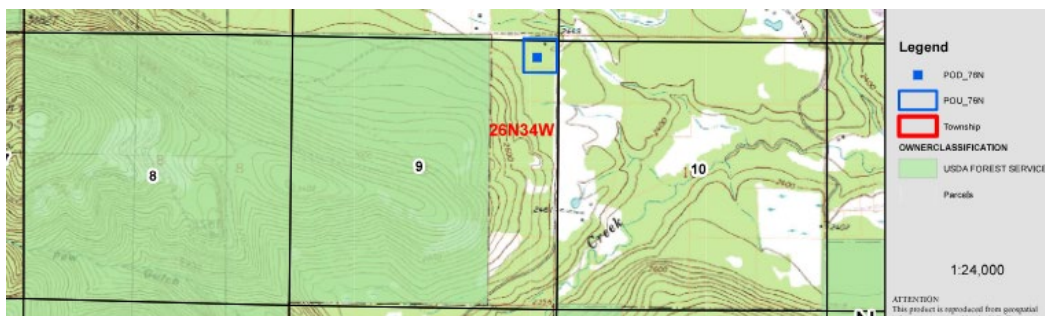
2. The United States objected to the point of diversion of the claim, stating:

The point of diversion, as described, incorrectly includes National Forest System land. No authorization is found for a pipeline in NE Section 8. Point of Diversion No. 1 should be modified to **NENENE Section 9**, Township 26N, Range 34W, Sanders County, to be limited to private land.

This objection will be resolved if the above modifications to the points of diversion are made.

3. On May 21, 2025, the United States filed evidence showing the legal land description of the decreed point of diversion is improperly located on federal land. (Doc.¹ 7.00).

4. The filed evidence included a map showing the entirety of Section 8, T26N, R34W, Sanders County describes federal land while the NENENE of Section 9, T26N, R34W, Sanders County describes private land:



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

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 76N DECREE ISSUED 02/28/1984.

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

6. The notice-type issue remark served its notice purpose.

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.

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.

CONCLUSIONS OF LAW

1. The evidence submitted by the United States in support of their objection to the point of diversion of the claim overcomes the prima facie status of claim 76N 30117172. The evidence shows the point of diversion should be the following:

<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
NENENE		9	26N	34W	SANDERS

2. The notice-type issue remark in Findings of Fact No. 9 has served its notice purpose.

RECOMMENDATIONS

1. The point of diversion for claim 76N 30117172 should be modified to:

<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
NENENE		9	26N	34W	SANDERS

2. The issue remark 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 USPS Mail:

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

Water Right Number: 76N 30117172 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: JEREMY F LUNNEN
3439 WEST BEACON AVE
SPOKANE, WA 99208

***Priority Date:** DECEMBER 31, 1952

***Type of Historical Right:** USE

Purpose (Use): DOMESTIC

Flow Rate: 22.00 GPM

Volume: 3.50 AC-FT

Households: 1

Maximum Acres: 1.00

***Source Name:** SPRING, UNNAMED TRIBUTARY OF PEW GULCH

Source Type: GROUNDWATER

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		NENENE	9	26N	34W	SANDERS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: GRAVITY FLOW/DIRECT

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		NENENE	9	26N	34W	SANDERS

Total: 1.00