

Montana Water Court
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FILED
06/18/2025
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
76N-0033-R-2024
Weisz, Madeleine
6.00

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

CLAIMANTS: Glowdena B. Finnigan; William C. Finnigan
OBJECTOR: United States of America (USDA Forest Service)

76N-0033-R-2024
76N 104741-00
76N 104742-00

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 104741-00 and 76N 104742-00 are water right claims for mining purposes owned by Glowdena B. Finnigan and William C. Finnigan.
2. The United States, DOA Forest Service filed objections to the claims during the Basin 76N Objection period.
3. On June 28, 2024, Tammy and Carmon Groff filed requests to withdraw claims 76N 104741-00 and 76N 104742-00. The withdrawal forms had a note saying that Carmon Groff is the Conservator for Glowdena B. Finnigan and William C. Finnigan but did not include any documents to establish Carmon Groff as the Conservator. A filing deadline was set for Carmon Groff to file documents establishing authority to withdraw the Finnigans' claims; nothing was filed by the deadline.
4. On March 5, 2025, the United States filed a Response and included a Declaration of Thor Burbach, a Hydrologist for the United States Forest Service. Burbach indicates that Kootenai National Forest Hydrology staff conducted a site visit to the claimed points of diversion (on Kootenai National Forest land) in 2020 and Burbach's staff conducted an additional site visit on September 10, 2024. On both occasions, staff found no evidence of a diversion, ditch, or pipeline associated with the claim. (Doc.¹ 4.00, Ex. 1).
5. A filing deadline was set for the claimants of record to respond to the United States' assertion that claims 76N 104741-00 and 76N 104742-00 should be dismissed from the adjudication as abandoned or non-perfected. The Order stated that if nothing was filed by the deadline, the Court would conclude that the claimants agreed that the claims should be dismissed from the adjudication. Nothing was filed by the deadline. Claims 76N 104741-00 and 76N 104742-00 should be dismissed from the adjudication.

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

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. There are two essential elements for the abandonment of a water right: nonuse of the water associated with the water right and intent to abandon the water right. The objectors have the initial burden of proving that a water right has not been used for a sufficiently long period of time to raise a rebuttable presumption of an intent to abandon that right. Once a period of nonuse sufficient to raise the presumption of an intent to abandon has been established, the burden shifts to the claimant of the water right to explain the reasons for nonuse. *In re Adjudication of the Existing Rights to the Use of all the Water, Both Surface & Underground Within the Clark Fork River Drainage Area*, 908 P.2d 1353, 1355 (internal citations omitted).

The United States met their initial burden of proving that there has been a sufficiently long period of non-use for claims 76N 104741-00 and 76N 104742-00. The claimants did not meet their burden of explaining the reasons for non-use.

3. If a claimant fails to comply with an Order issued by the Water Court in its review of issue remarks, including an Order issued by a Water Master appointed by the Court, the Court on its own initiative may amend or dismiss the claim to conform with information in the claim file or information obtained as part of the adjudication process. Section 85-2-248(9) MCA. The information before the court indicates that claims 76N 104741-00 and 76N 104742-00 should be dismissed as non-perfected or abandoned.

RECOMMENDATIONS

1. Claims 76N 104741-00 and 76N 104742-00 should be dismissed from the adjudication.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the claims are reflected as dismissed in the state's centralized database.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Glowdena B. Finnigan
% Carmon M. Groff
PO Box 1514
Noxon, MT 59853

William C. Finnigan

Advance, MO 63730
(Mail Undeliverable)

Interested Parties:

Tommy Groff
Carmon Groff
PO Box 1514
Noxon, MT 59853

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 104741-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: GLOWDENA B FINNIGAN
 C/O CARMON M GROFF, PO BOX 1514
 NOXON, MT 59853

 WILLIAM C FINNIGAN
 --
 ADVANCE, MO 63730

Priority Date:

Type of Historical Right:

Purpose (Use): MINING

Flow Rate:

Volume:

Source Name: VERMILION RIVER

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.

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

Water Right Number: **76N 104742-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: GLOWDENA B FINNIGAN
 C/O CARMON M GROFF, PO BOX 1514
 NOXON, MT 59853

 WILLIAM C FINNIGAN
 --
 ADVANCE, MO 63730

Priority Date:

Type of Historical Right:

Purpose (Use): MINING

Flow Rate:

Volume:

Source Name: SPRING, UNNAMED TRIBUTARY OF VERMILION RIVER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.