

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

CLAIMANTS: Lloyd W. Austin; Patricia A. Austin; Robert W.
Austin; Steven Austin

76N-0065-R-2025
76N 30113546

OBJECTORS: Lloyd W. Austin; Patricia A. Austin

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 30113546 is a domestic claim from a well. It appeared in the Preliminary Decree with DNRC issue remarks. The Water Court is required by statute to address all issue remarks appearing on a claim.

2. The issue remarks appearing on claim 76N 30113546 state:

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

NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.

NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS
1.5 ACRE-FEET PER YEAR.

3. The Claimants objected to the claim to address the issue remarks. The Claimants indicate that the flow rate should be 25 gpm based on recent pump testing and the flow rate for claim 76N 30153514, which claims the same well. The Claimants agree the volume should be decreed as 1.5 AF per year to be consistent with the DNRC guidelines and the information in the issue remark. The Claimants' objection addresses the issue remarks appearing on the claims regarding flow rate and volume. The issue remark providing notice that the claim did not appear in the previous 76N Decree has served its purpose and should be removed.

4. The Objection also indicates that the well is shared with 76N 30153514, not claim 76N 30153513 as noted in the associated rights remark. The associated rights remark should be corrected. Based on the requested correction, the Court asked for clarification on the accurate point of diversion since claim 76N 30113546 identifies a point of diversion in the SENWNE of Section 19, T23N, R30W and associated right 76N 30153514 identifies a point of diversion in the SWNENE of Section 19, T23N, R30W. The Claimants responded on February 28, 2025 and indicated that the most accurate way to describe the point of diversion is by latitude and longitude coordinates. The Claimants agree that the legal land description for the point of diversion should be identified on the abstract as being located in the SWNENE of Section 19, T23N, R30W, but the following information remark should be added to be precise:

POINT OF DIVERSION IS LOCATED AT LATITUDE 47.74191, LONGITUDE -115.48941 (47°44'30.9"N, 115°29'21.9"W)

Accordingly, the point of diversion should be modified to SWNENE of Section 19, T23N, R30W, and the requested information remark should be added to the claim.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water 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. The information before the court including the objection from the claimants, the claimants' February 28, 2025, filings, and the information in the issue remarks support the requested modifications to claim 76N 30113546.

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 information provided by the claimants addresses the issue remarks on the claim. The issue remarks should be removed.

RECOMMENDATIONS

1. Claim 76N 30113546 should be modified as provided above.
2. The issue remarks should be removed from claims 76N 30113546.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Robert W. Austin
6 Osprey Drive W.
Thompson Falls, MT 59873

Steven Austin
2 Faro Lane
Trout Creek, MT 59874-9617

Service via Electronic Mail:

Taylor K. Heggen
Ferguson and Coppes, PLLC
PO Box 8359
Missoula, MT 59807
taylorh@fergusonlawmt.com
filings@fergusonlawmt.com
(Attorney for Lloyd and Patricia Austin)

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

Water Right Number: 76N 30113546 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: LLOYD W AUSTIN
6 FARO LN
TROUT CREEK, MT 59874

PATRICIA A AUSTIN
6 FARO LN
TROUT CREEK, MT 59874-9617

ROBERT W AUSTIN
6 OSPREY DR W
THOMPSON FALLS, MT 59873

STEVEN AUSTIN
2 FARO LN
TROUT CREEK, MT 59874-9617

***Priority Date:** DECEMBER 31, 1935

***Type of Historical Right:** FILED

Purpose (Use): DOMESTIC

Flow Rate: 25.00 GPM

Volume: 1.50 AC-FT

***Source Name:** GROUNDWATER

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		SWNENE	19	23N	30W	SANDERS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

POINT OF DIVERSION IS LOCATED AT LATITUDE 47.74191, LONGITUDE -115.48941
(47°44'30.9"N, 115°29'21.9"W)

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			E2NENE	19	23N	30W	SANDERS

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE ASSOCIATED. THEY SHARE THE SAME WELL.
76N 30113546, 76N 30153514.