

**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER CLARK FORK DIVISION
SOUTH END OF THE BITTERROOT RIVER SUBBASIN (76HE)**

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CLAIMANTS: Evan S. Gimpel; Hannah E. Gimpel

CASE 76HE-0302-P-2025
76H 29142-00

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. Claim 76H 29142-00 appeared in the Temporary Preliminary Decree for the Bitterroot River, South End (76HE) issued on May 25, 1994.

2. At the time the claim was examined (in the early 1990s) by the Department of Natural Resources and Conservation (DNRC), the DNRC found that the ownership in the water rights database was not consistent with the ownership of the underlying place of use.

3. To note the inconsistency, the DNRC placed the following issue remark on the claim:

AS OF 01/07/91, THIS WATER RIGHT APPEARS TO BE OWNED BY SALLY BLEVINS, NEZ PERCE RD, DARBY, MT 59829.

4. When the 76HE Temporary Preliminary Decree was issued, the record owners of claim 76H 29142-00 were Curtis and Darlene Ray.

5. According to the water rights database, the Rays transferred their ownership of claim 76H 29142-00 to Eric Lilienthal and Amy Gladwin in 2005, and then in 2020, Mr. Lilienthal and Ms. Gladwin transferred their ownership to Evan and Hannah Gimpel.

6. The Gimpels are the current owners of claim 76H 29142-00 in the water rights database. They are also the sole owners of the underlying place of use.

7. Based on this information, it appears the ownership issue remark is outdated and should be removed from the claim without changes to the claim's ownership.

8. The Gimpels and Ms. Blevins should review claim 76H 29142-00 to ensure it accurately reflects the current ownership of the water right. If ownership is correct, no further action is needed. If ownership is not correct, one or both parties should object to this Master's Report and notify the Court of the current ownership.

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.

CONCLUSION OF LAW

1. The ownership issue remark does not overcome the prima facie status of claim 76H 29142-00. Based on the evidence before the Court, the ownership issue remark is outdated and the ownership of claim 76H 29142-00 is current.

RECOMMENDATION

1. The ownership issue remark should be removed from claim 76H 29142. All other issue remarks should remain on the claim and they will be resolved in the next decree. All other issue remarks will remain on the claim abstract and will be resolved in the next decree.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

SERVICE VIA USPS MAIL

Evan S Gimpel
Hannah E Gimpel
144 Bowman Rd
Hamilton, MT 59840

Potential Owner

Sally Blevins
Nez Perce Rd
Darby, MT 59829

SERVICE VIA ELECTRONIC MAIL

Garrett Musso
MT DNRC Post Exam &
Distribution Program Supervisor
garrett.musso2@mt.gov

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SOUTH END SUBBASIN- BITTERROOT RIVER
BASIN 76H

Water Right Number: 76H 29142-00 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: EVAN S GIMPEL
144 BOWMAN RD
HAMILTON, MT 59840

HANNAH E GIMPEL
144 BOWMAN RD
HAMILTON, MT 59840

Priority Date: JUNE 22, 1914

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 35.90 GPM

Volume: 1.50 AC-FT

Households: 1

Maximum Acres: 3.00

Source Name: NELSON 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		SWNESW	26	1N	22W	RAVALLI

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

Ditch Name: ROSS DITCH B
DITCH NAME: ROSS B DITCH

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	3.00		NWSWSE	26	1N	22W	RAVALLI

Total: 3.00

Remarks:

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

THE FOLLOWING POTENTIAL ISSUES WERE IDENTIFIED DURING CLAIMS EXAMINATION OR DURING PREVIOUS WATER COURT PROCEEDINGS.

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE RAVALLI COUNTY WATER RESOURCES SURVEY (1958) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

USDA AERIAL PHOTOGRAPH NO. 179-99, DATED 08/02/79, APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

DNRC EXAMINATION WAS UNABLE TO CONFIRM THE USE OF THIS WATER RIGHT FOR THE TEN
CONSECUTIVE YEARS PRIOR TO JULY 1, 1973.

THE CLAIMED VOLUME WAS NOT EXAMINED. THE CLAIMED NUMBER OF ACRES OF DOMESTIC IRRIGATION
APPEARS TO BE INACCURATE.