

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

CLAIMANTS: Gerard A. Dery; Janel M. Dery

76N-0032-R-2024
76N 103214-00
76N 133368-00

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

FINDINGS OF FACT

1. Claims 76N 103214-00 and 76N 133368-00 appeared in the 76N Preliminary Decree issued September 21, 2023. They are both stock claims with a March 25, 1893 priority date. The claims did not receive any DNRC issue remarks. The United States of America (USDA Forest Service) filed objections to both claims.

2. A status conference was held on October 16, 2024. The claimants, Gerard Dery and Janel Dery, did not appear at the scheduled conference. During the status conference, the United States explained that it objected to claims 76N 103214-00 and 76N 133368-00 because the legal land descriptions of the points of diversion and places of use incorrectly include federal land. A filing deadline was set for the United States to provide evidence in support of its objections.

3. On January 17, 2025, the United States filed a Response. The United States indicates that in 1995, the Derys conveyed their parcels on the Munson Creek drainage to the Forest Service and provides a copy of the deed as Exhibit 1. The deed conveys all appurtenances to the land and does not reserve any water rights to the Derys.

However, the Derys have an easement for a pipeline that diverts water from Munson Creek in the SWNWSW of Section 19, T22N, R27W and conveys water to Derys' private land in the SESE of Section 24, T22N, R28W. According to the United States, the only parcels owned by the Derys within the Places of Use identified on claims 76N 103214-00 and 76N 133368-00 are the SESE of Section 24, T21N, R28W, and the NWNE and NW of Section 25, T21N, R28W.

4. The United States indicated that their objections would be resolved if claim 76N 133368-00 is dismissed and claim 76N 103214-00 is amended to (1) identify the SWNWSW of Section 19, T22N, R27W as the only point of diversion, and (2) to refine the place of use to include only the parcels owned by the Derys: the SESE of Section 24, T22N, R27W and the NW and NWNE of Section 25, T22N, R28W.

5. A show cause order was issued for the claimants to respond to the United States' contentions. The order stated that if the claimants did not file anything by the deadline, the Court would conclude that the claimants agreed that claim 76N 103214-00

should be modified as proposed by the United States and that claim 76N 133368-00 should be dismissed. Nothing was filed by the deadline.

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.

The evidence provided by the United States overcomes the prima facie status of claims 76N 103214-00 and 76N 133368-00. The evidence supports modifying claim 76N 103214-00 as discussed above and supports dismissing claim 76N 133368-00.

2. 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 supports the United States' proposed modifications to claim 76N 103214-00 and the dismissal of claim 76N 133368-00.

RECOMMENDATIONS

1. Claim 76N 103214-00 should be modified as provided above.
2. Claim 76N 133368-00 should be dismissed from the adjudication.

Post Decree Abstract of Water Right Claims are served with the Report to confirm that the recommendations have been implemented in the state's centralized database.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Gerard A. Dery
Janel M. Dery
1119 N. Madson Street
Liberty Lake, WA 99019-9531

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 103214-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GERARD A DERY
1119 N MADSON ST
LIBERTY LAKE, WA 99019-9531

JANEL M DERY
1119 N MADSON ST
LIBERTY LAKE, WA 99019

Priority Date: MARCH 25, 1893

Type of Historical Right: FILED

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

***Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: MUNSON 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		SWNWSW	19	21N	27W	SANDERS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

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	NW	25	21N	28W	SANDERS
2			SESESE	24	21N	28W	SANDERS
3			NWNE	25	21N	28W	SANDERS

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

Water Right Number: **76N 133368-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: GERARD A DERY
 1119 N MADSON ST
 LIBERTY LAKE, WA 99019-9531

 JANEL M DERY
 1119 N MADSON ST
 LIBERTY LAKE, WA 99019

Priority Date:

Type of Historical Right:

Purpose (Use): STOCK

Flow Rate:

Volume:

Source Name: MUNSON CREEK

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.