

MONTANA WATER COURT
 CLARK FORK DIVISION
 CLARK FORK RIVER BELOW THE FLATHEAD RIVER
 BASIN 76N
 PRELIMINARY DECREE

CLAIMANT: Montana State Board of Land Commissioners -
 Forestry and Trust Lands Division

CASE 76N-6001-A-2026
 76N 42682-00

CORRECTION ORDER

BACKGROUND

The Water Court decreed claim 76N 42682-00 in the Preliminary Decree for the Clark Fork River, Below Flathead River (Basin 76N). The Montana State Board of Land Commissioners, Forestry and Trust Lands Division (“State”) owns the claim.

The Preliminary Decree abstract describes the claim as a right to use water from Mudd Creek in Sanders County for domestic use. The decree abstract describes the place of use as:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	5	SWSENE	12	22N	27W	Sanders

The decree abstract does not contain any issue remarks, and the claim did not receive any objections.

According to the claim file, the statement of claim was filed by the State on November 23, 1981. The claim form identifies the point of diversion and the place of use as Lot 5 of a subdivision called “Mudd Creek – Little Thompson.” The place of use

description also includes the aliquot part identified as the SWSENE of section 12, T22N, R27W.

The Water Court issued a Temporary Preliminary Decree (“TPD”) for Basin 76N on February 28, 1984. The TPD abstract point of diversion and place of use descriptions included Lot 5. The following excerpt shows how the TPD described these two claim elements:

POINTS OF DIVERSION AND MEANS OF DIVERSION:							
LOT	BLK	QTR	SEC	TWP	RGE	COUNTY	
005		SWSENE	12	22N	27W	SANDERS	PUMP
PLACE OF USE FOR DOMESTIC:							
ACRES	LOT	BLK	QTR	SEC	TWP	RGE	COUNTY
001	005		SWSENE	12	22N	27W	SANDERS
REMARKS: SUBDIVISION:							
MUDD CREEK-LITTLE THOMPSON RECREATION AREA							
SEE GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR FURTHER DELINEATION OF THIS RIGHT.							

Basin 76N is a reexamination basin, meaning it was subject to another round of review by DNRC pursuant to the Court’s Order Addressing Reexamination. SWO-0002-WC-2012 (Dec. 14, 2012). During reexamination, the Department of Natural Resources and Conservation (“DNRC”) made the following modification the subdivision lot information for the point of diversion elements of the claim:

Point of Diversion and Means of Diversion:							
ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County	
1	005	SWSENE	12	22N	27W	SANDERS	
Period of Diversion: JANUARY 1 TO DECEMBER 31							
Diversion Means: PUMP <i>No name subdivision. Added lot to POD</i>							
Subdivision: TRACT/LOT: 005 <i>RJ 05/11/2023</i>							
Period of Use: JANUARY 1 to DECEMBER 31							
Place of Use:							
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SWSENE	12	22N	27W	SANDERS
THE PLACE OF USE IS SA-MUDD CREEK-LITTLE THOMPSON RECREATION AREA							

Even though DNRC modified the claim, it did not flag the modification with an issue remark. That means notice of the modification was not included on the Basin 76N objection list and neither the State nor anyone else objected during the objection period.

On June 29, 2026, the State notified the Water Court via email that the place of use legal description is erroneous. The State included with its correspondence certain background material, including material from the claim file, copies of a certificate of survey, and a marked abstract that shows the modifications DNRC made to the claim during the claim reexamination process.

DISCUSSION

The Montana Water Use Act requires the Water Court to provide certain information about the elements of all water rights. For the place of use and point of diversion elements, this includes a description of the land to which the water right is appurtenant, and a description of the place where water is diverted. Section 85-2-234(6)(e) & (g), MCA. For both elements, this means providing a legal land description. The legal land description is based on the Public Land Survey System (“PLSS”) with additional information if the property has been subdivided.

The PLSS uses two types of units to describe land. The first is a system of 640 acre sections with a larger 36 section township. Each section contains 160-acre quarter-sections (*e.g.*, NE $\frac{1}{4}$ or NE), 40 acre quarter-quarter-sections (*e.g.*, SE $\frac{1}{4}$ NE $\frac{1}{4}$ or SENE), and 10-acre quarter-quarter-quarter-sections (*e.g.*, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ or SWSENE). However, sometimes due to the curvature of the earth, adjacency to a meandering river or patented mining claim, or other factors prevent uniform division of sections into aliquot parts. In these situations, the PLSS describes land in terms of “lots.” These lots are often called “government lots.” Unlike aliquot parts of a section, government lots are not uniform in size. When a section is irregular in size (*i.e.* something other than 640 acres), the lots adjoining the north boundary of the section are referred to by a government lot number, and do not include any aliquot part description smaller than a quarter-section.

Somewhat confusingly, the term “lot” also is used to describe subdivided parcels of property created under the subdivision laws. Based on the materials provided by the State, a certificate of survey was filed creating subdivided lots. It appears that the DNRC claim examiner mixed up the two types of lots and changed the point of diversion legal description to a government lot, when it should only have referred to the PLSS aliquot

part with a subdivided lot information remark. The change creates an ambiguous legal description when coupled with the reference to the SWSENE of section 12. This type of error is clerical in nature and correctable by the Water Court. Rule 60(a), M.R.Civ.P.

ORDER

Therefore, it is ORDERED that the reference to Government Lot 5 is removed from the legal description for the point of diversion for claim 76N 42682-00 and replaced with a subdivision information remark.

A post decree abstract of the claim is included with this order to confirm the correction has been made in the State's centralized water rights record system.

Post-decree abstracts of the claims are included with this Order to confirm the modifications to the claims have been made in the State's centralized water rights record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail

Ben Eckstein
MT DOJ Agency Legal Services Bureau for TLMD
blcwatercourt@mt.gov
(Attorney for Trust Lands)

Elizabeth (Letty) Miller
Water Rights Specialist
Agriculture and Grazing Management Bureau
Montana Department of Natural Resources and Conservation
Elizabeth.Miller@mt.gov

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

Water Right Number: 76N 42682-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
FORESTRY AND TRUST LANDS DIVISION
PO BOX 201601
HELENA, MT 59620-1601

Priority Date: APRIL 15, 1973

Type of Historical Right: USE

Purpose (Use): DOMESTIC

Flow Rate: 5.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name: MUDD 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	5	SWSENE	12	22N	27W	SANDERS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PUMP

THE POINT OF DIVERSION IS LOCATED IN LOT 5 CERTIFICATE OF SURVEY NO. 3534
, SANDERS COUNTY.

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			SWSENE	12	22N	27W	SANDERS

THE PLACE OF USE IS SA-MUDD CREEK-LITTLE THOMPSON RECREATION AREA.