FILED
10/14/2026
Melissa Lockman
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
76I-0009-R-2026
Thompson, Eliot
3.00

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MONTANA WATER COURT
CLARK FORK DIVISION
FLATHEAD RIVER, MIDDLE FORK
BASIN 76I
PRELIMINARY DECREE

* * * * * * * * * * * * * * * * * * * *

CLAIMANT: United States, DOA Forest Service

OBJECTOR: United States, DOA Forest Service

CASE 76I-0009-R-2026
76I 51529-00
76I 51530-00
76I 51531-00
76I 51532-00
76I 51533-00
76I 51537-00
76I 51541-00
76I 51542-00
76I 51543-00

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 have **13 days** from the service date of the notice of filing of this report to file a written objection or request an extension of the objection period. Rule 23, Water Right Adjudication Rules; Rule 6, Montana Rules of Civil Procedure. 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

The above-captioned claims appeared in the Preliminary Decree for the Middle Fork of the Flathead River (Basin 76I) issued on December 6, 2024. The claims are all owned by the United States Department of Agriculture – Forest Service ("United States"), which objected to each claim.

FINDINGS OF FACT

1. Claims 76I 51529-00, 76I 51531-00, 76I 51532-00, 76I 51533-00, 76I 51541-00, and 76I 51542-00 are recreation claims utilizing a "bucket" means of diversion with a 0.45 gpm flow rate.

2. Claim 76I 51530-00 is a recreation claim utilizing a "bucket" means of diversion with a 0.90 gpm flow rate.

3. Claim 76I 51543-00 is a recreation claim utilizing a "bucket" means of diversion with a 53.86 gpm flow rate.

4. Claim 76I 51537-00 is a commercial claim utilizing a "bucket" means of diversion with a 0.90 gpm flow rate, which received the following Montana Department of Natural Resources and Conservation ("DNRC") issue remark:

> THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS .85 ACRE-FEET PER YEAR.

5. The United States objected to the flow rate for each claim. The claims were subsequently consolidated into this case, and on May 13, 2026, the Court ordered the United States to provide additional evidence to support its objections. (Doc. 1.00)

6. On July 20, 2026, the United States filed a Response to Court Order ("Response"), which includes the Declaration of Thor Burbach. (Doc. 2.00). According to the Response, the flow rates were incorrectly identified due to the misplacement of decimal points in the original filings for the Statements of Claim for each of these claims.

7. Claims 76I 51529-00, 76I 51531-00, 76I 51532-00, 76I 51533-00, 76I 51541-00, and 76I 51542-00 were each filed with a flow rate of 0.001 cfs (approximately 0.45 gpm). The Response states that the Forest Service intended to assert a flow rate of 0.01 cfs (4.49 gpm).

The Response requests modifying the flow rate of each claim to 5.00 gpm, representing half of the 2013 DNRC Claims Examination Manual guideline for similar claims. According to the Response, these claims are located at less-intensely used backcountry campsites, explaining why the Forest Service did not assert the full 10.00 gpm flow rate defined in the DNRC guidelines.

8. Claims 76I 51530-00 and 76I 51537-00 were filed with a flow rate of 0.002 cfs (approximately 0.90 gpm), but the Response states that the Forest Service intended to assert a flow rate of 0.02 cfs (8.98 gpm).

The Response requests modifying the flow rate of each claim to 10.00 gpm based on the 2013 DNRC Claims Examination Manual guideline for similar claims. According to the Response, these claims are located at backcountry campsites that serve as basecamps used by recreationalists for more than three nights, which justifies asserting the full 10.00 gpm flow rate outlined in the DNRC guidelines.

9. Because the maximum possible volume is based on the flow rate and period of use, any modifications to the flow rate will affect the calculation for the maximum possible volume of the water right. Correcting the flow rate of claim 76I 51537-00 by increasing it from 0.90 gpm to 10.00 gpm results in a significantly larger maximum possible volume.

10. Claim 76I 51543-00 was filed with a flow rate of 0.12 cfs (53.86 gpm), but the Response states that the United States intended to assert a flow rate of 0.02 cfs (8.98 gpm). The Response requests modifying the flow rate to 10.00 gpm, consistent with the rationale for claims 76I 51530-00 and 76I 51537-00.

11. All claims also received notice-type issue remarks from the DNRC:

> THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.
>
> MEANS OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

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. This prima facie proof may be overcome by other evidence that proves, by a preponderance of the evidence, that one or more elements of the claim are incorrect; this standard of proof applies to both objectors and claimants objecting to their own claims. Rule 19, W.R.Adj.R.; *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558.

2. A preponderance of the evidence is evidence showing a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

3. 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.

4. 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.

5. If a claimant agrees to reduce or limit an element of a claim, the water court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

6. The water court must address all issue remarks decreed on a claim. Section 85-2-248, MCA.

CONCLUSIONS OF LAW

1. The evidence in the record indicates that it is more probable than not that the Forest Service historically used and intended to assert a flow rate of 0.01 cfs (4.49 gpm) for claims 76I 51529-00, 76I 51531-00, 76I 51532-00, 76I 51533-00, 76I 51541-00, and 76I 51542-00.

2. The United States' request to modify the flow rate for claims 76I 51529-00, 76I 51531-00, 76I 51532-00, 76I 51533-00, 76I 51541-00, and 76I 51542-00 to 5.00 gpm

is reasonable as it is based on guidelines from the DNRC's Claims Examination Manual. Furthermore, no other water users objected to the Forest Service's proposed flow rate.

3. The evidence in the record indicates that it is more probable than not that the Forest Service historically used and intended to assert a flow rate of 0.02 cfs (8.98 gpm) for claims 76I 51530-00 and 76I 51537-00.

4. The United States' request to modify the flow rate for claims 76I 51530-00 and 76I 51537-00 to 10.00 gpm is reasonable as it is based on guidelines from the DNRC's Claims Examination Manual. Furthermore, no other water users objected to the Forest Service's proposed flow rate.

5. The modification of the flow rate for claim 76I 51537-00 resolves the maximum feasible volume issue remark. The modified flow rate supports the claimed volume.

6. The United States' proposed flow rate for claim 76I 51543-00 is a reduction, and no evidence supporting the reduction is required.

7. The remaining issue remarks served their notice purpose.

RECOMMENDATIONS

1. The flow rate for claims 76I 51529-00, 76I 51531-00, 76I 51532-00, 76I 51533-00, 76I 51541-00, and 76I 51542-00 should be modified to 5.00 gpm.

2. The flow rate for claims 76I 51530-00, 76I 51537-00, and 76I 51543-00 should be modified to 10.00 gpm.

3. All issue remarks should be removed from all claims in this matter.

Post Decree Abstracts of Water Right Claim reflecting these recommendations are served with this Report.

Service via Electronic Mail

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(Attorney for United States, DOA Forest Service)

Electronically Signed By:
Hon. Judge Eliot Thompson
Wed, Oct 14 2026 01:56:19 PM

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
FLATHEAD RIVER, MIDDLE FORK
BASIN 76I

Water Right Number: **76I 51529-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date: JUNE 1, 1932

Type of Historical Right: USE

Purpose (Use): RECREATION

Flow Rate: 5.00 GPM

Volume: 0.20 AC-FT

Source Name: DOLLY VARDEN CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SESWSW	28	27N	12W	FLATHEAD

Period of Diversion: JUNE 1 TO NOVEMBER 30

Diversion Means: BUCKET

Period of Use: JUNE 1 TO NOVEMBER 30

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SESWSW	28	27N	12W	FLATHEAD

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
FLATHEAD RIVER, MIDDLE FORK
BASIN 76I

Water Right Number: **76I 51530-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date: JUNE 1, 1932

Type of Historical Right: USE

Purpose (Use): RECREATION

Flow Rate: 10.00 GPM

Volume: 0.20 AC-FT

Source Name: FLATHEAD RIVER, MIDDLE FORK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SESESE	23	27N	13W	FLATHEAD

Period of Diversion: JUNE 1 TO NOVEMBER 30

Diversion Means: BUCKET

Period of Use: JUNE 1 TO NOVEMBER 30

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SESESE	23	27N	13W	FLATHEAD

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
FLATHEAD RIVER, MIDDLE FORK
BASIN 76I

Water Right Number: **76I 51531-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date: JUNE 1, 1932

Type of Historical Right: USE

Purpose (Use): RECREATION

Flow Rate: 5.00 GPM

Volume: 0.30 AC-FT

Source Name: DOLLY VARDEN CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SESESE	26	27N	13W	FLATHEAD

Period of Diversion: JUNE 1 TO NOVEMBER 30

Diversion Means: BUCKET

Period of Use: JUNE 1 TO NOVEMBER 30

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SESESE	26	27N	13W	FLATHEAD

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
FLATHEAD RIVER, MIDDLE FORK
BASIN 76I

Water Right Number: **76I 51532-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date: JUNE 1, 1932

Type of Historical Right: USE

Purpose (Use): RECREATION

Flow Rate: 5.00 GPM

Volume: 0.20 AC-FT

Source Name: ARGOSY CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NESESE	24	26N	13W	FLATHEAD

Period of Diversion: JUNE 1 TO NOVEMBER 30

Diversion Means: BUCKET

Period of Use: JUNE 1 TO NOVEMBER 30

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NESESE	24	26N	13W	FLATHEAD

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
FLATHEAD RIVER, MIDDLE FORK
BASIN 76I

Water Right Number: **76I 51533-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date: JUNE 1, 1932

Type of Historical Right: USE

Purpose (Use): RECREATION

Flow Rate: 5.00 GPM

Volume: 0.20 AC-FT

Source Name: DOLLY VARDEN CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NESESE	1	26N	13W	FLATHEAD

Period of Diversion: JUNE 1 TO NOVEMBER 30

Diversion Means: BUCKET

Period of Use: JUNE 1 TO NOVEMBER 30

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NESESE	1	26N	13W	FLATHEAD

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
FLATHEAD RIVER, MIDDLE FORK
BASIN 76I

Water Right Number: **76I 51537-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date: MAY 22, 1941

Type of Historical Right: USE

Purpose (Use): COMMERCIAL

Flow Rate: 10.00 GPM

***Volume:** 1.00 AC-FT

Source Name: FLATHEAD RIVER, MIDDLE FORK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWNESE	19	28N	15W	FLATHEAD

Period of Diversion: MAY 1 TO NOVEMBER 30

Diversion Means: BUCKET

Period of Use: MAY 1 TO NOVEMBER 30

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NWNESE	19	28N	15W	FLATHEAD

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
FLATHEAD RIVER, MIDDLE FORK
BASIN 76I

Water Right Number: **76I 51541-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date: JUNE 1, 1932

Type of Historical Right: USE

Purpose (Use): RECREATION

Flow Rate: 5.00 GPM

Volume: 0.20 AC-FT

Source Name: MORRISON CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SESENW	8	27N	13W	FLATHEAD

Period of Diversion: JUNE 1 TO NOVEMBER 30

Diversion Means: BUCKET

Period of Use: JUNE 1 TO NOVEMBER 30

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SESENW	8	27N	13W	FLATHEAD

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
FLATHEAD RIVER, MIDDLE FORK
BASIN 76I

Water Right Number: **76I 51542-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date: JUNE 1, 1932

Type of Historical Right: USE

Purpose (Use): RECREATION

Flow Rate: 5.00 GPM

Volume: 0.40 AC-FT

Source Name: FLATHEAD RIVER, MIDDLE FORK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWNWNW	36	28N	15W	FLATHEAD

Period of Diversion: JUNE 1 TO NOVEMBER 30

Diversion Means: BUCKET

Period of Use: JUNE 1 TO NOVEMBER 30

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NWNWNW	36	28N	15W	FLATHEAD

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
FLATHEAD RIVER, MIDDLE FORK
BASIN 76I

Water Right Number: **76I 51543-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804-7203

Priority Date: JUNE 1, 1932

Type of Historical Right: USE

Purpose (Use): RECREATION

Flow Rate: 10.00 GPM

Volume: 1.00 AC-FT

Source Name: MORRISON CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NENWSW	32	29N	13W	FLATHEAD

Period of Diversion: JUNE 1 TO NOVEMBER 30

Diversion Means: BUCKET

Period of Use: JUNE 1 TO NOVEMBER 30

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NENWSW	32	29N	13W	FLATHEAD