

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
1-800-624-3270  
(406) 586-4364  
watercourt@mt.gov

**IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK BETWEEN THE BLACKFOOT AND FLATHEAD RIVERS  
CLARK FORK DIVISION - BASIN 76M**

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR THE  
PRELIMINARY DECREE OF THE CLARK FORK BETWEEN BLACKFOOT  
AND FLATHEAD RIVERS**

The Temporary Preliminary Decree for the Clark Fork, between the Blackfoot and Flathead Rivers - Basin 76M, was issued on November 29, 1984. Objections filed to claims in the Temporary Preliminary Decree have been addressed and resolved.

Since issuance of the Temporary Preliminary Decree in 1984, there have been statewide changes to several classes or elements of water rights. These changes include changes regarding examination and decrees of claims for fish and wildlife, wildlife, and recreation purposes. There have also been changes to claim elements such as standardization of source names and point of diversion legal descriptions. In some instances, additional information has been added to the abstracts of claims in this Preliminary Decree. This additional information includes ditch names, reservoir data, and period of diversion. These changes have been authorized by Montana Water Court Orders. *See* Amended Order on Period of Diversion - Statewide entered December 11, 2008; Second Amended Order on Period of Diversion - Statewide entered November 10, 2014; Order Addressing Reexamination entered December 14, 2012; and Supplemental Order Regarding Fish and Wildlife, Wildlife, and Recreation Claims - Statewide 2013 entered April 17, 2013.

These Findings of Fact and Conclusions of Law are issued for inclusion in the Preliminary Decree for the Clark Fork, between the Blackfoot and Flathead Rivers - Basin 76M as authorized by §§ 3-7-224(2) and 85-2-231, MCA. These Findings of Fact and Conclusions of Law supersede and replace the Findings of Fact and Conclusions of Law for the Temporary Preliminary Decree filed on November 29, 1984.

## **FINDINGS OF FACT**

### **DESCRIPTION OF BASIN**

1. Basin 76M encompasses the Clark Fork, between the Blackfoot and Flathead Rivers and its tributaries as well as groundwater located within Basin 76M. The boundaries of Basin 76M are outlined on the attached map.

### **DECREE ABSTRACTS AND INDEX**

2. In addition to these Findings and Conclusions, this Decree consists of abstracts for each individual water right claim decreed in this basin. Accompanying the Decree are six Indexes designed to facilitate research on water rights included in the Decree. The six Indexes are as follows:

- Water Right Claim Identification Number Index
- Owner Name Index
- Priority Date Index
- Point of Diversion Index
- Source Name Index
- Issue Remark Index

3. Copies of the Decree and six Indexes are located at the Department of Natural Resources and Conservation (DNRC) Missoula Regional Office, the DNRC Water Rights Adjudication Office in Helena, and the Montana Water Court in Bozeman. This information is also available on the DNRC's Water Rights Adjudication webpage.

### **UNRESOLVED FACTUAL AND LEGAL ISSUES**

4. The objection period allows interested parties to raise issues regarding their own water rights or other water rights in this decree. Issues may also be raised by the Water Court on its own initiative ("on its own motion"). See Rule 8, W.R.Adj.R.

Many unresolved factual and legal issues have been noted by issue remarks on the individual claim abstracts. The Issue Remark Index combines the issue remarks into a list arranged numerically by water right claim number. Searching the Issue Remark Index by water right claim number will identify issue remarks on individual claim abstracts. Objections may be filed to claims with issue remarks. Issue remarks not resolved through the objection process will be resolved as directed by § 85-2-248, MCA.

Water users within this Basin and other interested persons will be mailed a Notice of Entry of Preliminary Decree and Notice of Availability contemporaneously with the filing of these Findings and Conclusions. The Notice of Availability explains the objection process and sets a deadline for filing objections with the Water Court.

5. Claims for water rights reserved under the laws of the United States of America are included in the Montana general adjudication of water rights. The State of Montana, through the Reserved Water Rights Compact Commission, engaged in the negotiation of reserved water right compacts with the federal government and Indian Tribes. §§ 85-2-701 through 85-2-708, MCA.

6. The Confederated Salish and Kootenai Tribes of the Flathead Reservation (“Tribes”), the United States of America, and the State of Montana entered into a Compact (“CSKT Compact”) settling the water right claims of the Tribes, its members, and allottees, and the United States on behalf of the Tribes, its members, and allottees, in accordance with § 85-2-702, MCA.

7. As provided in Article VII.B.1 of the CSKT Compact, certain Water Rights Arising Under State Law (as that term is defined in the CSKT Compact), were included in the Preliminary Decree issued by the Water Court on June 9, 2022 (the “CSKT Compact Preliminary Decree”), and are being addressed by the Court in Case No. WC-0001-C-2021. For purposes of this decree, the water rights decreed in the CSKT Compact Preliminary Decree include claims 76M 94404-01 and 76M 94404-02, which were split from claim 76M 94404-00. Because the claims were decreed in the CSKT Compact Preliminary Decree, they are not included in this decree.

8. There may be other Tribal reserved rights in this basin that are not reflected in this decree. Those rights may be issued in a separate decree.

### **CONCLUSIONS OF LAW**

1. This is a general adjudication of existing water rights. An existing water right is a right to the use of water which is protected under the law as it existed prior to July 1, 1973. Section 85-2-102(13), MCA.

2. Certain claims were exempt from the statement of claim filing process but could be voluntarily filed. § 85-2-222, MCA (1979). These exempt rights were for stock or domestic uses from instream or groundwater sources. In 2013, the Montana Legislature created a process to file claims for existing water rights that were exempt from filing in the statewide water right adjudication. § 85-2-222(2), MCA.

3. The Montana Water Court has jurisdiction to enter a Preliminary Decree for the Clark Fork, between the Blackfoot and Flathead Rivers - Basin 76M pursuant to Title 85, Chapter 2, Montana Code Annotated. *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 103 S.Ct. 3201, 77 L.Ed.2d 837 (1983); *State ex rel. Greely v. Conf. Salish & Kootenai Tribes*, 219 Mont. 76, 712 P.2d 754 (1985).

4. These Findings of Fact, Conclusions of Law, and abstracts define existing water rights under Montana law in Basin 76M and comprise a Preliminary Decree in accordance with § 85-2-231, MCA, and Rule 4, W.R.Adj.R.

### **ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service Via Email:**

Department of Natural Resources and  
Conservation  
Water Resources  
Todd Netto, Adjudication, Enforcement and  
Distribution Bureau Chief  
PO Box 201602  
Helena, MT 59620  
TNetto@mt.gov

DNRC Water Resources  
Missoula Regional Office  
P.O Box 5004  
Missoula, MT 59806-5004  
Phone (406) 721-4284  
jnave@mt.gov  
kbrown3@mt.gov  
garrett.musso2@mt.gov

# Basin 76M Clark Fork, Between Blackfoot and Flathead Rivers

