

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

**CLARK FORK DIVISION
FLATHEAD RIVER, TO AND INCLUDING FLATHEAD LAKE
BASIN 76LJ**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR THE
PRELIMINARY DECREE OF THE FLATHEAD RIVER, TO AND INCLUDING
FLATHEAD LAKE**

These Findings of Fact and Conclusions of Law are issued by the Water Court for inclusion in the Preliminary Decree for the Flathead River, to and including Flathead Lake (Basin 76LJ) as authorized by §§ 3-7-224(2) and 85-2-231, MCA.

FINDINGS OF FACT

DESCRIPTION OF BASIN

1. Basin 76LJ encompasses the Flathead River drainage above the outlet of Flathead Lake, including all tributaries other than the Swan River and the South Fork and Middle Fork of the Flathead River. The basin includes both surface water and groundwater. The basin boundaries 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 the following six indexes designed to facilitate research on water rights included in the Decree:

- Water Right Claim Identification Number Index
- Owner Name Index
- Priority Date Index

- Point of Diversion Index
- Source Name Index
- Issue Remark Index

3. The Decree and six indexes can be viewed on the DNRC's Water Rights Adjudication webpage. They are also available at the Department of Natural Resources and Conservation (DNRC) Kalispell Regional Office, the DNRC Water Rights Adjudication office in Helena, and the Montana Water Court office in Bozeman.

SENIOR WATER RIGHTS

4. There are water rights on the water sources within this basin and in adjoining basins and subbasins that are not included in this Decree and may be senior to some of the rights described in the Decree. Rights in this Decree may be curtailed or reduced during times of water shortage to satisfy senior water rights.

SPECIFICS OF EXAMINATION PROCEDURE

5. The Department of Natural Resources and Conservation ("DNRC") examined each claim for incomplete or inaccurate information in accordance with the Water Right Claim Examination Rules adopted by the Montana Supreme Court.

6. The extent of each water right claim in this Decree is further defined by these Findings of Fact and Conclusions of Law. The specifics of each claim appear in the abstract of the water right. Each abstract of the claimed right includes (when the information was available):

- (a) The name and mailing address of the owner of the right;
- (b) The flow rate and/or volume;
- (c) The priority date of the right;
- (d) The purpose for which the right is used;
- (e) The place of use;
- (f) The source of water included in the right;
- (g) The point of diversion;
- (h) The means of diversion;
- (i) The period of use;

(j) The period of diversion;

(k) Any other information necessary to define the nature and extent of the right.

7. If the claim does not include all the information required by § 85-2-224, MCA, and the information was not provided to the DNRC prior to issuance of this Decree, the right is decreed within the limits of the information submitted. Issue remarks were added to many abstracts noting unresolved issues or missing information.

8. Where the DNRC determined a claimant filed two or more water rights on the same claim form, each right was separated and assigned an individual water right claim number pursuant to Court orders. These additional claims are called “implied claims.”

GUIDELINES

9. The Water Right Claim Examination Rules establish guidelines to aid in the examination of certain elements. The guidelines are estimates of reasonable water use, but are not considered evidence of actual water use. All elements are subject to modification to accurately reflect a claimant’s historical use of a water right.

ELEMENTS OF A CLAIM

Ownership

10. A water right is decreed in the name of the entity or entities identified as the current owner in the DNRC centralized record system. In accordance with § 85-2-424, MCA, the Department of Revenue provides information to DNRC to update water right ownership records. The water rights in this Decree reflect the current ownership information in the DNRC centralized record system as of February 21, 2025.

11. Some water rights previously decreed by a district court may be claimed by more than one person. When the combined flow rate of such claims exceeds the previously decreed flow rate, each claimant is decreed the claimed flow rate, but a “decree exceeded” issue remark is added to each right noting the conflict. Similarly, when more than one person claims a right based on the same notice of appropriation and the combined flow rate exceeds the flow rate stated in the notice, each claimant is decreed the claimed flow rate, but a “notice of appropriation exceeded” issue remark is added to each water right noting the conflict.

Flow Rate and Volume

12. The flow rate and volume are measured at the point of diversion unless otherwise noted on the abstract.

13. Flow rate is decreed numerically in gallons per minute (gpm) or in cubic feet per second (cfs) instead of the traditional miner's inches. One miner's inch is equivalent to 11.22 gpm. Forty miner's inches are equivalent to 1.00 cfs.

14. Volume is numerically decreed in acre feet per year. An acre foot of water will cover one level acre to a depth of one foot.

15. The Water Right Claim Examination Rules provide guidelines to aid in the examination of certain claimed flow rates and volumes. Specific flow rate and volume guidelines are described in the applicable Findings of Fact for irrigation rights, domestic rights, stockwater rights and other use rights.

Priority Date

16. The priority date is decreed as claimed except where it is incomplete or it contradicts the claim's supporting documentation. Where a claimed priority date includes only a year, the last day of the year is decreed as the priority date. Where a claimed priority date includes only a year and a month, the last day of the month is decreed as the priority date.

17. Claims identified as groundwater rights with priority dates after 1961 were reviewed for compliance with the 1961 Ground Water Act and are decreed accordingly.

Purpose

18. For examination, every claim is classified into one of four purposes: irrigation, domestic, stockwater, or other uses. The Water Right Claim Examination Rules govern examination of each claim based on its purpose as described in the applicable Findings of Fact for irrigation rights, domestic rights, stockwater rights and other use rights.

19. Multiple domestic and lawn and garden uses are examined in accordance with the Water Right Claim Examination Rules on domestic claims.

20. Other use claims include uses of water for purposes other than irrigation, domestic, and stockwater. The claim abstract lists the specific purpose for which the claim is used. The Basin 76LJ Decree includes the following other use claims: commercial, fire protection, institutional, lawn and garden, municipal, recreational, wildlife and other purposes.

Place of Use

21. The place of use is decreed as claimed unless information in the claim file, aerial photographs, Water Resource Surveys, information obtained from field investigations, or data submitted by the claimant clarifies the claimed place of use.

Source Name

22. The source is generally designated by the name listed in the most recent United States Geological Survey (USGS) quadrangle maps. If the source or source name cannot be substantiated on USGS maps, DNRC reviewed other available information to substantiate the claimed source name including the source name most commonly recognized in the locality.

23. The source for claims associated with lakes and reservoirs may be decreed under the name of the inflowing stream.

24. When a water right involves more than one primary source, all sources are listed on the abstract and index. Secondary sources and points of diversions may be identified in an information remark. Implied claims may have been generated for multiple sources which represent separate water rights.

Point of Diversion

25. The point of diversion is decreed as claimed unless a different point of diversion is apparent. The point of diversion is specifically designated by legal land description. Secondary points of diversion may be noted in an information remark, as appropriate.

Means of Diversion

26. The means of diversion is reviewed and decreed as claimed unless a different means of diversion is apparent.

Period of Use

27. The period of use is decreed as the earliest month and day and the latest month and day water was historically used in a calendar year as previously decreed or documented.

Period of Diversion

28. The period of diversion is decreed as claimed when documentation in the claim file supports the claimed period of diversion. If there is no documentation in the claim file indicating a period of diversion but the claimant has identified a period of diversion, the period of diversion is decreed as identified by the claimant.

29. If the claimant does not identify the period of diversion the Court's Statewide Orders on Periods of Diversion are followed. SWO-0001-WC-2008.

IRRIGATION RIGHTS

Flow Rate

30. A numeric flow rate is decreed for direct flow and offstream reservoir irrigation claims except where the means of diversion is water spreading, natural subirrigation, or natural overflow. If a flow rate in excess of 17.00 gallons per minute (gpm) per acre or less was claimed and substantiated, it is decreed as claimed. If a flow rate in excess of 17.00 gpm per acre is claimed, but not substantiated, the flow rate may be reduced and a remark added to the abstract.

31. No numeric flow rate is decreed when the means of diversion is water spreading, natural subirrigation, or natural overflow.

32. A numeric flow rate is generally not decreed for onstream reservoirs. However, if DNRC determined the onstream reservoir is not a significant part of the irrigation system, a numeric flow rate is decreed and an information remark is added noting the system is primarily a direct flow irrigation system.

Volume

33. Numeric volume generally is not decreed for direct flow irrigation rights except when necessary to adequately administer the right or where the means of diversion is water spreading. All direct flow rights are limited to their historical beneficial use.

34. Volume is generally decreed for rights which involve a reservoir. However, if it is determined that a reservoir is not a significant part of an irrigation system, a numeric volume is not decreed and an information remark is added noting the system is primarily a direct flow irrigation system.

Period of Use

35. The period of use is decreed on all irrigation claims. If a period of use is not claimed or not within the appropriate climatic area guideline, an issue remark is added. Where the means of diversion is water spreading, the period of use is decreed as year-round unless the claimant specifies different dates.

DOMESTIC RIGHTS

Flow Rate

36. The flow rate for direct flow and offstream reservoir domestic claims is decreed as claimed. If the claimed flow rate exceeds 35.00 gpm and the accompanying documentation or other data does not substantiate the flow rate, an issue remark is added.

37. A flow rate is not decreed for onstream reservoirs.

Volume

38. A volume is decreed for direct flow, onstream reservoirs and offstream reservoirs. The volume guideline for domestic use is 1.50 acre feet per year per household and 2.50 acre feet per year per acre of lawn and garden. If the claimed volume exceeds these guidelines, an issue remark is added.

Period of Use

39. The period of use is decreed on all domestic claims. The period of use guideline for domestic and multiple domestic claims is year round. For lawn and garden claims, the period of use guidelines are the same as the irrigation guidelines.

STOCKWATER RIGHTS

Flow Rate

40. A flow rate is decreed for direct flow and offstream reservoir stockwater claims. If the claimed flow rate for stockwater rights from wells, developed springs, pumps, and gravity flow pipelines exceeds 35.00 gpm and the accompanying

documentation or other data does not substantiate the flow rate, the flow rate is decreed as claimed and an issue remark is added. A flow rate for stockwater rights from wells, developed springs, pumps and gravity flow pipelines which does not exceed 35.00 gpm is generally decreed as claimed.

41. A flow rate is not decreed for claims involving stock drinking directly from surface water sources or onstream reservoirs. Although not quantified by a numeric flow rate, such rights are limited to their historical beneficial use.

Volume

42. Unless otherwise directed by the Water Court, stockwater claims are not decreed a specific volume. Although not quantified by a decreed volume, the limit of the right is based on a consumptive use of 30.00 gallons per day per animal unit. An animal unit is described as a cow/calf pair or equivalent. The number of animal units is limited to the reasonable carrying capacity of the area historically serviced by the water source.

43. The claimed volume is decreed for all stockwater claims filed by the United States of America which involve pothole lakes and reservoirs.

Period of Use

44. For stockwater claims, the period of use guideline is year round.

OTHER USE RIGHTS

Flow Rate

45. A flow rate is decreed for all direct flow and offstream reservoir claims. The flow rate guideline for these claims is the capacity of the diversion and conveyance system. If the capacity of the diversion and conveyance system cannot be determined, an issue remark will be added. The flow rate may remain as claimed if there is no objection.

46. A flow rate is not decreed for onstream reservoirs, inlake claims or pothole lakes.

47. A flow rate is decreed for all instream claims. The guideline is the minimum amount necessary to sustain a specific purpose. An issue remark will be added if a guideline cannot be determined by the DNRC. The flow rate may remain as claimed if there is no objection.

Volume

48. A quantified volume is decreed for all other use claims with the exceptions of mining rights and fire protection rights. The volume of a mining right is limited to its historical beneficial use. The volume of a fire protection right is limited to the amount necessary for the purpose of fire protection.

49. The volume guideline for direct flow claims is that which appears reasonable and customary for the purpose, with the exception of municipalities and agricultural spraying. The volume guideline for municipal rights is 250.00 gallons per capita per day. The volume guideline for agriculture spraying is 2.00 acre-feet per year or 4.00 acre-feet per year if a reservoir is used.

50. Reservoir claims and inlake claims for less than 15.00 acre-feet are decreed as claimed, and no issue remarks are added. For reservoir claims and inlake claims greater than 15.00 acre-feet, the guideline is maximum storage capacity of the reservoir plus the estimate of evaporation. If the volume is less than or equal to the guideline, the volume is decreed as claimed. If a claimed volume is above 15.00 acre-feet, exceeds the guideline, and cannot be substantiated by information in the claim file or through contact with the claimant, an issue remark may be added to the claim. The volume may remain as claimed if there is no objection.

51. A volume is decreed for instream claims. The guideline is the minimum amount necessary to sustain the specific purpose. An issue remark will be added if a guideline cannot be determined by the DNRC, and the volume may remain as claimed if there is no objection.

52. The claimed volume is decreed for all fish and wildlife, wildlife, and recreation claims which involve pothole lakes.

Fish and Wildlife Claims

53. All fish and wildlife, wildlife, and recreation claims were decreed in accordance with the April 17, 2013 Supplemental Order Regarding Fish & Wildlife, Wildlife, & Recreation Claims.

Period of Use

54. For other use claims, the claimed period of use is decreed if reasonable for the claimed purpose.

MULTIPLE USES OF A WATER RIGHT

55. A water right might be represented by two or more claims for multiple purposes or uses. An information remark noting the multiple use of a water right appears whenever irrigation, stockwater, domestic, and other use claims are for the same right. The use of the right for several purposes does not increase the extent of the right but decrees the right to alternate and interchange the use or purpose of the water in accordance with historical practices.

SUPPLEMENTAL RIGHTS

56. For irrigation claims, several water rights with different priority dates or different sources may be combined to supplement the irrigation requirements of all or part of the same acreage. Each right is limited to its own flow rate and place of use. The sum total flow rate of supplemental rights shall not exceed the amount historically put to beneficial use.

INTERBASIN TRANSFER CLAIMS

57. Claims having a point of diversion in one basin and place of use in another basin are called interbasin transfers. Interbasin transfer claims are decreed in the basin where the water is diverted.

UNRESOLVED FACTUAL AND LEGAL ISSUES

58. The objection period provides an opportunity for all interested parties to raise issues that need to be resolved. Any issues may also be reviewed by the Water Court on its own motion as provided in Rule 8, W.R.Adj.R.

59. Unresolved factual and legal issues have been noted by issue remarks on the individual claim abstracts. The Issue Remark Index combines all the issue remarks into one index arranged numerically by water right claim number. Searching the Issue Remark Index by water right claim number will identify all issue remarks that are noted on individual claim abstracts. Issue remarks not resolved through the objection process will be resolved by the Water Court as directed by § 85-2-248, MCA.

60. 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.

61. If a water right claim receives no objection and is not reviewed by the Water Court on its own motion or as directed by § 85-2-248, MCA, the claim will likely be included in the final decree for the basin as decreed in this Decree. After all the objections and hearings on a source have been resolved and completed, the claims may be enforced and administered by a court with jurisdiction.

WITHDRAWN AND DISMISSED CLAIMS

62. The abstract of a terminated, withdrawn, or dismissed claim contains a reference to its terminated, withdrawn, or dismissed status. Terminated, withdrawn, and dismissed claims are listed in the Decree index.

LATE CLAIMS

63. The Montana Supreme Court set the deadline for filing claims of existing water rights as 5:00 PM on April 30, 1982. Claims filed after this time and date were deemed forfeited. See *Matter of the Adjudication of Yellowstone River Water Rights*, 253 Mont. 167, 832 P.2d 1210 (1992).

64. The Water Use Act provides for the conditional remission of the forfeiture of late claims. See § 85-2-221(3), MCA. Any remission of forfeiture is conditioned upon the claimant meeting the requirements set by the statute and the Court's rules and orders.

65. Late claim abstracts contain the term "Late Claim:" followed by the letter "A" or "B." "A" claims identify a claim mailed or executed on or before April 30, 1982 and received by the DNRC after April 30, 1982, but on or before May 7, 1982. "B" claims identify claims which were executed after April 30, 1982 and mailed or submitted to the DNRC on or before July 1, 1996. Late claim status is also identified in the Decree index. Objections may be filed to these claims.

Based on these Findings of Fact, the Chief Water Judge makes the following:

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. Existing water rights include federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law. Section 85-2-102(13), MCA. This action for the adjudication of existing water rights commenced on June 8, 1979 when the Montana Supreme Court issued its Order requiring the filing of statements of claim of existing rights.

2. Certain claims were exempt from the statement of claim filing process but could be voluntarily filed. Section 85-2-222, MCA (1979). These exempt rights were for stock or domestic uses from instream or groundwater sources. The Montana Legislature later created a process to file as yet unfiled claims for existing water rights that were exempt from filing in the statewide water right adjudication. Section 85-2-222(2), MCA. This Decree includes those “exempt” water right claims that were voluntarily filed but does not include “exempt” water rights that were not filed.

3. 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 Indian Tribes and the federal government. Sections 85-2-701 through 85-2-708, MCA. There are claimed tribal reserved rights and federal reserved rights in this basin that are *not* reflected in this Decree.

4. 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 (the “Flathead 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. The Flathead Compact is codified at § 85-20-1901, MCA. The Water Court previously issued its Confederated Salish and Kootenai Tribes of the Flathead Reservation-State of Montana-United States Compact Decree and provided notice throughout this basin of the right to object to the reserved

water rights recognized in the Compact. The Compact Decree is being addressed in Water Court Case WC-0001-C-2021. Objections to the Flathead Compact were filed and proceedings are ongoing. No objections may be filed against the Flathead Compact in this Decree.

5. Some Basin 76LJ claims are within the Flathead Reservation. Some of the claims assert reserved water rights. Any non-Confederated Salish and Kootenai Tribe water right claim within the Reservation may include a remark raising the issue of whether the claimed right is part of the Tribal Water Right identified in the Flathead Compact or whether it is a state law based claim.

6. The State of Montana and the United States of America concluded a separate compact (the “NPS Compact”) settling the reserved water right claims of the National Park Service to water in the Park Service units located in Montana, including Glacier National Park. The NPS Compact is codified at § 85-20-401, MCA. The Water Court issued its National Park Service-Montana Compact Decree in 1996 and provided notice throughout this basin of the right to object to the reserved water rights recognized in the NPS Compact. The NPS Compact Decree proceeding was captioned as Case WC-94-1. Objections to the NPS Compact were filed and resolved. The Court approved and confirmed the NPS Compact in its April 11, 2005 Findings of Fact and Conclusions of Law Approving and Confirming the United States Park Service - Montana Compact. The NPS Compact recognizes specific United States reserved water rights in Glacier National Park. Because the reserved rights recognized in the NPS Compact were the subject of a prior proceeding in Case WC-94-1, no objections may be filed against those reserved rights in this Decree.

7. The Montana Water Court has jurisdiction to enter a Preliminary Decree for the Flathead River, to and including Flathead Lake (Basin 76LJ) pursuant to Title 85, Chapter 2, Montana Code Annotated. *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545 (1983); *State ex rel. Greely v. Conf. Salish & Kootenai Tribes*, 219 Mont. 76, 712 P.2d 754 (1985).

8. These Findings of Fact, Conclusions of Law, and abstracts define the nature

and extent of each claimed existing water right under Montana law in Basin 76LJ 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:

Montana DNRC, Water Resources
Todd Netto, Adjudication, Enforcement and Distribution Bureau Chief
Shannon Buswell, Water Rights Data Quality & Standards Program Supervisor
PO Box 201602
Helena, MT 59620
TNetto@mt.gov
Shannon.Buswell@mt.gov

Kalispell Regional Office, DNRC
Water Resources
655 Timberwolf Parkway, Ste 4
Kalispell, MT 59901-1215
jferch@mt.gov
garrett.musso2@mt.gov

BASIN 76LJ - FLATHEAD RIVER, TO AND INCLUDING FLATHEAD LAKE

Legend

- Cities
- Flathead River
- Streams
- ▨ Flathead Indian Reservation
- - - Counties
- Basin Boundary
- Lakes

