

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
WESTSIDE SUBBASIN OF THE BITTERROOT RIVER BASIN (76HF)

IN THE MATTER OF THE ADJUDICATION)
OF THE EXISTING RIGHTS TO THE USE)
OF ALL THE WATER, BOTH SURFACE AND)
UNDERGROUND, WITHIN THE WESTSIDE)
SUBBASIN OF THE BITTERROOT RIVER)
DRAINAGE AREA, INCLUDING ALL)
TRIBUTARIES OF THE WESTSIDE)
SUBBASIN OF THE BITTERROOT RIVER)
IN RAVALLI COUNTY, MONTANA)

CASE NO. 76HF-168
76H-B-215914-00

CLAIMANT: Big Creek Lakes Reservoir Association

OBJECTOR: United States of America (USDA Forest Service);
United States of America (Bureau of Indian Affairs);
Avista Corporation;
MT Department of Fish, Wildlife, and Parks

**ORDER AMENDING AND ADOPTING MASTER'S REPORT
FOR CLAIM 76H-B-215914-00**

Pursuant to Montana Code Annotated, §85-2-233(4), the claims in the above entitled case were assigned to Water Master Douglas Ritter. On July 21, 2005 the Water Master issued a report containing Findings of Fact and Conclusions of Law. Copies of the Report were served upon the parties.

On August 5, 2005, Big Creek Lakes Reservoir Association, through its attorney, filed an Objection to the Master's Report asserting errors in Finding of Fact No.6 and Conclusion of Law No. IV. The Master made a typographical error with respect to point of diversion 13 and place of use

parcel 6. The correct legal description for point of diversion 13 should be Section 17 and not Section 18. The correct legal description for place of use parcel 6 should be refined to include the N2N2 of Section 25, Township 8 North, Range 21 West.

Also, Big Creek Lakes Reservoir Association correctly notes the number of acres for claim 76H-B-215914-00 should be 5,040. The October 14, 2003 Stipulation and the Master's Report both contain the same mathematical error of 4,960 acres.

The Court has reviewed the Water Master's Findings of Fact and Conclusions of Law, the Objection to the Water Master's Report, and the Stipulation and

ORDERS that Point of Diversion Number 13 and Place of Use Parcel Number 6, identified in Finding of Fact No. 6, be amended to read as follows:

Point of Diversion and Means of Diversion:

<u>LOT/BLK</u>	<u>QTR. SEC.</u>	<u>SEC.</u>	<u>TWP.</u>	<u>RGE.</u>	<u>COUNTY</u>	<u>MEANS</u>
13	NWENW	17	8N	20W	RAVALLI	PUMP

Place of Use for Irrigation:

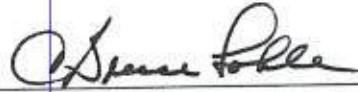
	<u>ACRES</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
006	160.00	N2N2	25	8N	21W	RAVALLI

ORDERS that the Maximum Acres and Total Acres recommended in the Master's Report for claim 76H-B-215914-00 be amended to **5,040 acres**. The remark noting that water has been delivered annually to a maximum of 3,200 acres is retained.

Pursuant to Rule 53(e), Montana Rules of Civil Procedure, the Court **ADOPTS** the Master's Report **AS AMENDED** herein and

ORDERS that an **Abstract of Water Right Claim as Modified by the Montana Water Court** be served with this Order to confirm that the recommendations set forth in the Master's Report, as amended herein, have been adopted for claim 76H-B-215914-00.

DATED this 3 day of NOVEMBER, 2005.



C. Bruce Loble
Chief Water Judge

CERTIFICATE OF SERVICE

I, Patricia J. Gunderson, Deputy Clerk of Court of the Montana Water Court, hereby certify that a true and correct copy of the above **ORDER AMENDING AND ADOPTING MASTER'S REPORT FOR CLAIM 76H-B-215914-00** was duly served upon the persons listed below by depositing the same, postage prepaid, in the United States mail.

Big Creek Lakes Reservoir Association
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DATED this *3rd* day of *November*, 2005.

Patricia J. Gunderson
Patricia J. Gunderson
Deputy Clerk of Court

**ABSTRACT OF WATER RIGHT CLAIM
AS MODIFIED BY THE WATER COURT**

**WESTSIDE SUBBASIN- BITTERROOT RIVER
BASIN 76H
IMPORTANT NOTICE**

AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.

Water Right Number: 76H 215914-00 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Version Status: ACTIVE
Late Claim: B

Owners: BIG CREEK LAKES RESERVOIR ASSOC
% KAY NEAL
2850 RIPPLING WOODS
VICTOR, MT 59875

***Priority Date:** DECEMBER 31, 1928

Enforceable Priority Date: DECEMBER 31, 1928

CLAIM FILED LATE 06/28/96 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL FEDERAL AND INDIAN RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: USE
Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 25.00 CFS
THE FLOW RATE OF THIS WATER RIGHT HAS BEEN REDUCED TO THE 17 GPM PER ACRE GUIDELINE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 5,040.00

Source: BIG 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		NWSWSE	11	8N	21W	RAVALLI
Diversion Means: HEADGATE						
2		SENESE	11	8N	21W	RAVALLI
Diversion Means: HEADGATE						
3		NESWSE	11	8N	21W	RAVALLI
Diversion Means: HEADGATE						
4		SWNESE	11	8N	21W	RAVALLI
Diversion Means: HEADGATE						

5	NESWSW	12	8N	21W	RAVALLI
Diversion Means:	HEADGATE				
6	SWSWSE	12	8N	21W	RAVALLI
Diversion Means:	HEADGATE				
7	SWSWSE	12	8N	21W	RAVALLI
Diversion Means:	HEADGATE				
8	SWSESE	12	8N	21W	RAVALLI
Diversion Means:	HEADGATE				
9	NESESW	12	8N	21W	RAVALLI
Diversion Means:	HEADGATE				
10	SESESE	12	8N	21W	RAVALLI
Diversion Means:	HEADGATE				
11	SWNWNE	18	8N	20W	RAVALLI
Diversion Means:	HEADGATE				
12	SWSENE	18	8N	20W	RAVALLI
Diversion Means:	HEADGATE				
13	NWNENW	17	8N	20W	RAVALLI
Diversion Means:	PUMP				

DITCH NAME FOR DIVERSION NO. 01 IS: COLE DITCH
 DITCH NAME FOR DIVERSION NO. 02 IS: BIG DITCH
 DITCH NAME FOR DIVERSION NO. 03 IS: CLARK-MCCUNE DITCH
 DITCH NAME FOR DIVERSION NO. 04 IS: HUMBLE DITCH
 DITCH NAME FOR DIVERSION NO. 05 IS: BUKER "B" DITCH
 DITCH NAME FOR DIVERSION NO. 06 IS: STRANGE "A" DITCH
 DITCH NAME FOR DIVERSION NO. 07 IS: STRANGE "B" DITCH
 DITCH NAME FOR DIVERSION NO. 08 IS: PARK HILL DITCH
 DITCH NAME FOR DIVERSION NO. 09 IS: SANDERS-MITTOWER-NICHOLS "A"
 DITCH
 DITCH NAME FOR DIVERSION NO. 10 IS: SANDERS-MITTOWER-NICHOLS "B"
 DITCH
 DITCH NAME FOR DIVERSION NO. 11 IS: LANGTON "A" DITCH
 DITCH NAME FOR DIVERSION NO. 12 IS: LANGTON "B" DITCH
 DITCH NAME FOR DIVERSION NO. 13 IS LANGTON PUMP.

Period of Use: APRIL 1 to JULY 19

***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	80.00		E2SE	11	8N	21W	RAVALLI
2	640.00			12	8N	21W	RAVALLI
3	640.00			13	8N	21W	RAVALLI
4	160.00		E2E2	14	8N	21W	RAVALLI
5	640.00			24	8N	21W	RAVALLI
6	160.00		N2N2	25	8N	21W	RAVALLI
7	80.00		S2SE	6	8N	20W	RAVALLI
8	640.00			7	8N	20W	RAVALLI
9	320.00		W2	8	8N	20W	RAVALLI
10	320.00		W2	17	8N	20W	RAVALLI
11	640.00			18	8N	20W	RAVALLI

***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>
12	640.00			19	8N	20W	RAVALLI
13	80.00		W2NW	20	8N	20W	RAVALLI
Total:	5,040.00						

THE LISTED PLACES OF USE DESCRIBE THE HISTORICAL GENERAL SERVICE AREA OF THE BIG CREEK LAKES RESERVOIR ASSOCIATION. WITHIN THIS SERVICE AREA, WATER HAS BEEN DELIVERED ANNUALLY TO A MAXIMUM NUMBER OF ACRES NOT EXCEEDING 3,200 ACRES.

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS OF THE CLAIMANT'S TOTAL 5,040.00 ACRES. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

120061-00 120062-00 215914-00