

Montana Water Court
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ELECTRONICALLY FILED

40J-4002-S-2020

February 1, 2021

Montana Water Court

MONTANA WATER COURT, LOWER MISSOURI DIVISION
MILK RIVER BETWEEN FRESNO RESERVOIR AND
WHITEWATER CREEK BASIN 40J

CLAIMANTS: Hirst Land & Cattle LLC; Dan Simonson Ranch Inc.

40J-4002-S-2020
40J 179104-00
40J 30150037

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this report carefully. You may file a written objection to the Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations.

The above stamped date indicates the date the Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to the Master's Report must be filed within 10 days of the date of the Master's Report. Because the Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. This means your objection must be received no later than **13 days** from the above stamped date.

If you file an objection, you must mail 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
PROCEDURAL HISTORY

On October 28, 2020, Montana Department of Natural Resources and Conservation (DNRC) Compliance Technician Noreen Hohman submitted a memorandum regarding a split request for water right claim 40J 179104-00. The memorandum was based upon a DNRC Form 641 “DNRC Ownership Update Divided Interest.” The Form 641 was signed by Dan Simonson, President Dan Simonson Ranch, Inc., and two members of Hirst Land & Cattle, LLC.

The Form 641 identified a proposed division of the place of use for claim 40J 179104-00 between Dan Simonson Ranch, Inc. and Hirst Land & Cattle, LLC. The Form 641 was supported by a Warranty Deed from Dan Simonson Ranch, Inc. to Hirst Land & Cattle, LLC. A map detailing the place of use for each owner was included with the Form 641.

These documents supported and identified with detail the proposed division of the place of use for stock claim 40J 179104-00. The map detailing the split of the claim’s place of use is enclosed with this report. A copy the map is attached to this report. A copy of the map and this report shall be placed in the claim file for future reference.

FINDINGS OF FACT

1. Stock claims are quantified by volume. The volume is quantified by a formula: 30 gallons per day per animal unit. The total number of animal units served is identified by the statement of claim.¹ The total number of livestock served by each parent claim, and the split claim generated from it, cannot exceed the original number of livestock identified by the statement of claim. The 641 Form indicates the claim is being split proportionately. Therefore, the following information remark should be added to the abstract of the parent and the split claim.

THIS WATER RIGHT CLAIM HISTORICALLY SERVED 50 ANIMAL UNITS.

If Dan Simonson Ranch, Inc. and Hirst Land & Cattle, LLC do not agree with this information remark, they should object to this Master’s Report and

¹ Statement of claim 40J 179104-00 identifies 100 animal units.

provide the number of cattle served by each of their claims up to the total of 100 cattle (animal units) identified by statement of claim 40J 179104-00.

2. The following modifications should be made to the claims.

Parent Claim 40J 179104-00 (Owned by Dan Simonson Ranch Inc.)

VOLUME:

THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATER PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

THIS WATER RIGHT CLAIM HISTORICALLY SERVED 50 ANIMAL UNITS.

PLACE OF USE:

<u>PARCEL ID</u>	<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
1		SWNE	30	34N	29E	PHILLIPS
2		SENE	30	34N	29E	PHILLIPS

Remarks:

SPLIT CLAIM NO. 40J 30150037 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

Split Claim 40J 30150037 (Owned by Hirst Land & Cattle, LLC)

VOLUME:

THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATER PURPOSES AT THE RATE OF 30- GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

THIS WATER RIGHT CLAIM HISTORICALLY SERVED 50 ANIMAL UNITS.

PLACE OF USE:

<u>PARCEL ID</u>	<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
1		SWNE	30	34N	29E	PHILLIPS
1 2		SENE	30	34N	29E	PHILLIPS

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 40J 179104-00.

CONCLUSIONS OF LAW

1. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information

from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

2. The Montana Water Court may split claims upon request of the claimants. Rule 26, W.R.Adj.R.

3. Livestock direct from source claims are normally unquantified. Livestock direct from source claims normally receive information remarks under flow rate and volume. The information remark under volume limits a livestock direct from source claim to reasonable carrying capacity of the place of use at a rate of 30 GPD/animal unit. When the number of animal units served is at issue, without evidence of carrying capacity of the land, the number of animal units identified by the prima facie statement of claim is the only proof available to establish the number of animal units served. *Burkhartsmeier v. Burkhartsmeier*, Case 40G-2 at p. 17-18, (MT Water Court Memorandum Opinion Mar. 11, 1997); *Cf. Stone Creek Ranches Inc. v. U.S.*, 2016 Mont. Water LEXIS 13 at ** 9-12 (Oct. 24, 2016) adopted by *Stone Creek Ranches Inc. v. U.S.*, 2016 Mont. Water LEXIS 6 (Nov. 9, 2016).

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. Post Decree Abstracts of Water Right Claim accompany this Report to confirm that the recommended changes have been made in the state's centralized water right record system.

Anna M. Stradley
Senior Water Master

Service via USPS Mail

Hirst Land & Cattle LLC
PO Box 517
Fountainville, PA 18923-0517

Dan Simonson Ranch Inc
16125 Lovejoy Rd
Loring, MT 59537
H: (406) 674-5247

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MILK RIVER BETWEEN FRESNO RESERVOIR & WHITEWATER CREEK
BASIN 40J**

Water Right Number: 40J 179104-00 STATEMENT OF CLAIM
Version: 3 -- SPLIT POST DECREE
Status: ACTIVE

Owners: SIMONSON, DAN RANCH INC
16125 LOVEJOY RD
LORING, MT 59537

Priority Date: DECEMBER 31, 1951

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

THIS WATER RIGHT CLAIM HISTORICALLY SERVED 50 ANIMAL UNITS.

Source Name: UNNAMED TRIBUTARY OF LAMBING COULEE

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		SWNE	30	34N	29E	PHILLIPS

***Period of Diversion:** JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNE	30	34N	29E	PHILLIPS

Diversion to Reservoir: DIVERSION # 1

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			SWNE	30	34N	29E	PHILLIPS

Remarks:

SPLIT CLAIM NO. 40J 30150037 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MILK RIVER BETWEEN FRESNO RESERVOIR & WHITEWATER CREEK
BASIN 40J**

Water Right Number: 40J 30150037 STATEMENT OF CLAIM
Version: 1 -- ORIGINAL RIGHT
Status: ACTIVE

Owners: HIRST LAND & CATTLE LLC
PO BOX 517
FOUNTAINVILLE, PA 18923 0517

Priority Date: DECEMBER 31, 1951

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE: MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

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<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
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1			SENE	30	34N	29E	PHILLIPS

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 40J 179104-00.

