

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
(406) 522-4131 fax
watercourt@mt.gov

FILED

JUN 18 2020

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER BELOW ROUNDUP BASIN (40C)
PRELIMINARY DECREE

CLAIMANT: Fifty 10 Ranch Inc.

40C-R278

40C 204891-00

40C 204906-00

40C 204918-00

40C 216189-00

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 this Master's 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 this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. Because this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

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 this 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 Musselshell River, Below Roundup (Basin 40C) issued on June 7, 2017. The claims are owned by Fifty 10 Ranch Inc. The claims did not receive objections or notices of intent to appear, but it did receive issue remarks during the DNRC's claims examination. The claims were consolidated into Case 40C-R278 to resolve the issue remarks.

FINDINGS OF FACT

40C 204891-00

1. Claim 40C 204891-00 received an issue remark stating that the place of use should be modified to match the DNRC correction to the point of diversion made during the claim reexamination period.

2. On October 22, 2019, Claimant was ordered to meet with the DNRC to resolve the issue remark on the claim.

3. On January 21, 2020, Claimant filed a *Verified Motion to Amend Water Right Claim*. Claimant provided a map demonstrating the correct location of the place of use. Claimant's *Verified Motion* states that the point of diversion should be modified to match the place of use. The *Motion* states that the point of diversion and place of use should be modified as follows:

<u>ID</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		<u>SW</u>	<u>4</u>	10N	29E	Musselshell
2		<u>SW</u>	<u>5</u>	10N	29E	Musselshell
<u>3</u>		<u>NE</u>	<u>6</u>	<u>10N</u>	<u>29E</u>	<u>Musselshell</u>

4. On January 21, 2020, Water Resources Specialist Matt Schmidt filed his *Memorandum* confirming Claimant's *Verified Motion* represents the historically accurate location of the claimed place of use. In his *Memo*, Mr. Schmidt also recommended the addition of an information remark clarifying the place of use for claim 40C 204891-00 stating:

THE PLACE OF USE, OR SERVICE AREA, GENERALLY INCLUDES T10N, R29E AND T11N, R29E. WATER IS APPROPRIATED FROM NORTH WILLOW CREEK AND TRANSPORTED TO VARIOUS SITES THROUGHOUT THE STATED TOWNSHIPS.

5. Claim 40C 204891-00 also received notice-type issue remark.

40C 204906

6. Claim 40C 204906-00 received an issue remark stating that the place of use should be modified to match the DNRC correction to the point of diversion made during the claim reexamination period.

7. On October 22, 2019, Claimant was ordered to meet with the DNRC to resolve the issue remark on the claim.

8. On January 21, 2020, Claimant filed a Verified Motion to Amend Water Right Claim. Claimant provided a map demonstrating the correct location of the place of use. Claimant's Verified Motion states that the place of use should be modified as follows:

<u>ID</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		<u>SW4</u>	<u>4</u>	10N	29E	Musselshell
2		<u>N2S2</u>	<u>5</u>	10N	29E	Musselshell
<u>3</u>		<u>N2S2</u>	<u>6</u>	<u>10N</u>	<u>29E</u>	<u>Musselshell</u>

9. On January 21, 2020, Water Resources Specialist Matt Schmidt filed his *Memorandum* confirming Claimant's Verified Motion represents the historically accurate location of the claimed place of use and that Hougen Land Inc. could be a potential owner. Mr. Schmidt's *Memo* also recommended the following refinements to the point of diversion and place of use for claim 40C 204906-00:

<u>ID</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		<u>SWSWSW</u>	4	10N	29E	Musselshell
2		<u>S2</u>	5	10N	29E	Musselshell
3		<u>SWNW</u>	5	10N	29E	Musselshell
<u>4</u>		<u>S2N2</u>	6	10N	29E	Musselshell
<u>5</u>		<u>N2S2</u>	6	10N	29E	Musselshell

10. On February 7, 2020, the Court sent an Order on Ownership apprising Hougen Land Inc. of its potential ownership, and set a filing deadline for Claimant to file

information or evidence disputing the further-refined place of use recommended by Mr. Schmidt in his *Memo*. Nothing was filed by the ordered deadline.

11. Claim 40C 204906-00 also received a notice-type issue remark.

40C 204918-00

12. Claim 40C 204918-00 received the following issue remark:

THE WATER RIGHTS FOLLOWING THIS STATEMENT APPEAR TO BE
DUPLICATE FILINGS. IT APPEARS ONLY ONE RIGHT IS INVOLVED.
204918-00 216189-00

13. On January 21, 2020, Claimant filed a *Request to Withdraw Statement of Claim* for claim 40C 216189-00 stating that this claim was a duplicate of claim 40C 204918-00. Additionally, Claimant filed a *Verified Motion to Amend* in order to add the reservoir dimensions listed on claim 40C 216189-00 to claim 40C 204918-00 and to amend the point of diversion to N2NESE, Sec 6, T10N, R29E, Musselshell County and the place of use to N2SE, Sec 6, T10N, R29E, Musselshell County.

14. On January 21, 2020, DNRC Water Resources Specialist Matt Schmidt filed his *Memorandum* stating that if the Court implements a withdrawal of claim 40C 216189-00, the DNRC recommends removing the duplicate claim remark from claim 40C 204918-00.

40C 216189-00

15. Claim 40C 216189-00 received the following issue remark:

THE WATER RIGHTS FOLLOWING THIS STATEMENT APPEAR TO BE
DUPLICATE FILINGS. IT APPEARS ONLY ONE RIGHT IS INVOLVED.
204918-00 216189-00

16. On January 21, 2020, Claimant filed a *Request to Withdraw Statement of Claim* for claim 40C 216189-00 stating that this claim was a duplicate of claim 40C 204918-00.

17. On January 21, 2020, DNRC Water Resources Specialist Matt Schmidt filed his *Memorandum* stating that if the Court implements a withdrawal of claim 40C 216189-00, the duplicate claim issue is moot.

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; Rule 10, W.R.Adj.R.
2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.
3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.
4. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.
5. 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.
6. 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. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.
7. Notice is required to other water users if a motion to amend will adversely affect other water rights. Section 85-2-233(6), MCA.
8. A claimant asserting an amendment to its claim has the burden to show that the historical use of the claim is accurately reflected by the requested amendment. *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558.
9. The Court may correct a clerical mistake found in a judgment, order, or other part of the record on motion or on its own, with or without notice. Rule 60(a), M.R.Civ.P.

CONCLUSIONS OF LAW

1. The evidence in the record is sufficient to resolve the issue remarks placed on the above-captioned claims.

2. The information submitted in Claimant's Verified Motion more accurately defines the location of the point of diversion and place of use on the Statement of Claim for claim 40C 204891-00. Therefore, the point of diversion and place of use should be modified as described in Findings of Fact Nos. 3 and 4. The requested amendment does not have the reasonable potential to adversely affect other water rights as it is a correction to the abstract which does not make any change to the actual historical use of the claimed right on the ground. Notice by publication of this amendment is not required.

3. The evidence shows by a preponderance that the point of diversion and place of use for claim 40C 204906-00 should be modified as described in Finding of Fact No. 9 to conform with the recommendations from the DNRC. The Court's previous Order on Ownership and this Master's Report notified Hougen Land Inc. of their potential ownership interest in the claim. Accordingly, notice by publication of this amendment is not required.

4. Claimant's agreement with the DNRC recommendation to withdraw claim 40C 216189-00 resolves the duplicate rights remark appearing on claims 40C 204918-00 and renders the duplicate right issue moot regarding claim 40C 216189-00. Claimant has also shown by a preponderance of the evidence that the reservoir record depicted on duplicate claim 40C 216189-00 should be added to claim 40C 204918-00 and the point of diversion and place of use should be modified as described in Finding of Fact No. 13.

5. The notice-type issue remarks appearing on claims 40C 204891-00 and 40C 204906-00 served their notice purpose and should be removed from the claims.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of the water right claims reflecting the recommended changes is attached to this Report and a copy of the maps depicting the corrected places of use have been placed in the claim files.

DATED this 18th day of June, 2020.



Eugene C. White
Water Master

Service via USPS Mail:

Fifty 10 Ranch Inc.
4580 W 124th Ave.
Broomfield, CO 80020
303-494-3524
303-284-2833

Potential Owner:

Hougen Land Inc.
PO Box 128
Melstone, MT 59054