

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
BIG DRY CREEK - BASIN (40D)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANT: John Hillenbrand

**CASE 40D-0010-R-2021**

40D 121943-00

40D 121944-00

40D 121945-00

40D 215467-00

**NOTICE OF FILING OF MASTER’S REPORT**

This Master’s Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master’s Report within **10 days** of the stamped date if you disagree or find errors with the Master’s findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master’s 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. If you file an objection, you must serve 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**

Claims 40D 121943-00, 40D 121944-00, 40D 121945-00 and 40D 215467-00 are claims owned by John Hillenbrand. The claims were decreed with DNRC issue remarks and called in on-motion of the Water Court after receiving a DNRC memorandum stating the source of the claims was incorrect. No objections, counterobjections, or NOIAs were filed on these claims. The claims were consolidated into Water Court Case 40D-0010-R-2021.

### FINDINGS OF FACT

1. On December 13, 2021, DNRC Water Resource Specialist Pam Weinmeister filed a Memorandum including her review of DNRC issue remarks. Ms. Weinmeister indicated that Claimant John Hillenbrand contacted her to aid in the resolution of these remarks.
2. Claim 40D 121943-00 received two DNRC issue remarks regarding changes to period of use and reservoir elements that were for notice purposes only.
3. According to Claimant and topographical maps, the correct source of this claim is Bateman Coulee.
4. Claim 40D 121944-00 received two DNRC issue remarks regarding changes to period of use and reservoir elements that were for notice purposes only.
5. According to Claimant and topographical maps, the correct source of this claim is Unnamed Tributary of Bateman Coulee.
6. Claim 40D 121945-00 has a DNRC issue remark regarding changes to the source element that was for notice purposes only.
7. According to Claimant and topographical maps, the correct source of this claim is Bateman Coulee.
8. Claim 40D 215467-00 received the following DNRC issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 40D  
PRELIMINARY DECREE ISSUED 09/28/1984.

CLAIM FILED LATE 06/28/1996 . IN ADDITION TO BEING SUBORDINATE TO  
ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID  
TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE  
SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE  
SECTION 85-2-221 MCA.

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE.  
DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A USE AND A  
RESERVED RIGHT.

NO PRIORITY DATE WAS CLAIMED.

9. The late claim issue remarks served their purpose to provide notice and can be removed.

10. Claimant submits an affidavit from Duncan McDonald regarding the building of the dikes on this claim. Mr. McDonald states he witnessed Vaughn Newland build the dikes in the summer of 1959. No Notice of Appropriation was filed for claim 41H 215467-00, so this claim is a use right.

11. According to Claimant and topographical maps, the correct source of this claim is Redbank Coulee.

#### CONCLUSIONS OF LAW

1. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v.*

*Burkhartsmeyer et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master’s Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as “a relatively modest standard that the statutory criteria are ‘more probable than not’ to have been met.” *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. 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.

5. The issues raised by issue remarks must be resolved as part of the adjudication process pursuant to Section 85-2-248, MCA.

6. When resolving issue remarks, the Montana 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.

#### RECOMMENDATIONS

The changes recommended above should be adopted. Post Decree Abstracts of Water Rights Claims are served with the Report to confirm that the recommendations have been made in the state’s centralized water right record system.

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Julia J. Nordlund  
Senior Water Master

#### Service via USPS Mail:

John Hillenbrand  
1369 Haxby Rd  
Jordan, MT 59337

**WATER COURT  
ABSTRACT OF WATER RIGHT CLAIM  
BIG DRY CREEK  
BASIN 40D**

**Water Right Number:** 40D 121943-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** JOHN HILLENBRAND  
1369 HAXBY RD  
JORDAN, MT 59337

**Priority Date:** DECEMBER 31, 1944

**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 STOCKWATERING 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.

**Source Name:** BATEMAN 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		SWNESW	6	19N	40E	GARFIELD

**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>
	SWNESW	6	19N	40E	GARFIELD

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 10.00 FEET

**Depth:** 7.00 FEET

**Surface Area:** 5.00 ACRES

**Capacity:** 14.00 ACRE-FEET

**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			SWNESW	6	19N	40E	GARFIELD

**WATER COURT  
ABSTRACT OF WATER RIGHT CLAIM  
BIG DRY CREEK  
BASIN 40D**

**Water Right Number:** 40D 121944-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** JOHN HILLENBRAND  
1369 HAXBY RD  
JORDAN, MT 59337

**Priority Date:** DECEMBER 31, 1944

**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 STOCKWATERING 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.

**Source Name:** UNNAMED TRIBUTARY OF BATEMAN 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		SWSESW	6	19N	40E	GARFIELD

**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>
	SWSESW	6	19N	40E	GARFIELD

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 9.00 FEET

**Depth:** 6.00 FEET

**Surface Area:** 4.25 ACRES

**Capacity:** 10.20 ACRE-FEET

**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			W2SESW	6	19N	40E	GARFIELD
2			E2SWSW	6	19N	40E	GARFIELD

**WATER COURT  
ABSTRACT OF WATER RIGHT CLAIM  
BIG DRY CREEK  
BASIN 40D**

**Water Right Number:** 40D 121945-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** JOHN HILLENBRAND  
1369 HAXBY RD  
JORDAN, MT 59337

**Priority Date:** DECEMBER 31, 1944

**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 STOCKWATERING 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.

**Source Name:** BATEMAN 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		NWSESE	36	20N	39E	GARFIELD

**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>
	NWSESE	36	20N	39E	GARFIELD

**Diversion to Reservoir:** DIVERSION # 1

THE DAM EXTENDS INTO THE SWNESE SEC 36 TWP 20N RGE 39E GARFIELD COUNTY.

**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			NWSESE	36	20N	39E	GARFIELD
2			NESE	36	20N	39E	GARFIELD

**WATER COURT  
ABSTRACT OF WATER RIGHT CLAIM  
BIG DRY CREEK  
BASIN 40D**

**Water Right Number:** 40D 215467-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Late Claim:** B

**Owners:** JOHN HILLENBRAND  
1369 HAXBY RD  
JORDAN, MT 59337

**Priority Date:** SEPTEMBER 30, 1959

**Enforceable Priority Date:** JUNE 30, 1973

CLAIM FILED LATE 06/28/1996 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

**Type of Historical Right:** USE

**\*Purpose (Use):** IRRIGATION

**Irrigation Type:** WATER SPREADING

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

**Volume:** 52.90 AC-FT

**Climatic Area:** 1 - HIGH

**Maximum Acres:** 23.00

**\*Source Name:** REDBANK 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		SESESE	17	20N	40E	GARFIELD

**Period of Diversion:** APRIL 1 TO NOVEMBER 1

**Diversion Means:** DIVERSION DAM

2		SENESE	16	20N	40E	GARFIELD
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**Period of Diversion:** APRIL 1 TO NOVEMBER 1

**Diversion Means:** DIVERSION DAM

**Period of Use:** APRIL 1 TO NOVEMBER 1

**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	10.00		S2SW	16	20N	40E	GARFIELD
2	13.00		NWSE	16	20N	40E	GARFIELD

**Total:** 23.00