

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MISSOURI RIVER BASIN BETWEEN MUSSELSHELL RIVER
AND FORT PECK DAM - BASIN (40E)
PRELIMINARY DECREE

CLAIMANTS: Douglas F. Hofeldt; Dustin D. Hofeldt

OBJECTOR: United States of America (Bureau of Land
Management)

CASE 40E-0020-R-2022
40E 5986-00

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, conclusions 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

Water right claim 40E 5986-00 appeared in the Preliminary Decree for the

Missouri River Between Musselshell River and Fort Peck Dam (Basin 40E) issued October 7, 2020. The claim received an objection from the United States Bureau of Land Management (United States) and an issue remark providing notice of potential legal or factual issues with the claim. The claim was consolidated into Case 40E-0020-R-2022 to resolve the issue remark and objection.

FINDINGS OF FACT

1. Water right claim 40E 5986-00 is a water spreading irrigation claim owned by Douglas and Dustin Hofeldt. According to Montana Cadastral records, the claim's place of use includes land in sections 32 and 33 T24N, R30E, Phillips County, which are administered by the United States.

2. On May 31, 2022, the United States submitted a Stipulation signed by attorneys for the United States and the Claimants, requesting the following modifications to the claim's place of use to remove land administered by the United States:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	130.60			31	24N	30E	PHILLIPS
2	137.40		<u>S2</u>	32	24N	30E	PHILLIPS
3	82.00		<u>S2S2</u>	33	24N	30E	PHILLIPS
Total:	350.00						

3. Claim 40E 5986-00 also received the following issue remark, which serves only to provide notice to water users (Notice Only Remark):

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 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 the

elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. The claimant of a water right claim may waive the advantage of § 85-2-227, MCA. If a claimant agrees to reduce or limit an element of a claim, the Water Court does not need to determine whether the burden of proof has been met. The Water Court may accept a claimant's requested reduction or limitation without further presentation of evidence, unless there is an unresolved issue remark on the claim, in which case § 85-2-248, MCA, must be applied. Rule 17 (c), W.R.Adj.R.2.

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.

CONCLUSIONS OF LAW

1. The parties' requested modifications to the place of use of claim 40E 5986-00 are reductions or limitations, which can be implemented without analysis of the burden of proof. Implementing these modifications resolves the United States' objection in this case.

2. The Notice Only Remark does not raise issues with the claim for the Water Court to resolve. This remark has served its notice purpose and can be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the place of use be modified as described above and the issue remarks be removed from the claim.

A Post-Decree Abstract of the water right claim are attached to this Master's Report for review.

Eyvind Ostrem
Water Master

Service via Electronic Mail

Eve W McDonald, Trial Atty
US DOJ-ENRD
999 18th St, So Terrace, Ste 370
Denver CO 80202
(303) 844-1381(Eve)
Evelyn.mcDonald@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV

Mark Widerschein, Trial Attorney
NRS-ENRD US DOJ
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
(202) 532-5803
mark.widerschein@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV

Patti L Rowland
Calli J Michaels
Bloomquist Law Firm PC
PO Box 1418
Dillon, MT 59725-1418
blf@helenalaw.com
(represents Hofeldts)

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, BETWEEN MUSSELSHELL RIVER AND FORT PECK DAM
BASIN 40E

Water Right Number: 40E 5986-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DOUGLAS F HOFELDT
20485 BARNEY OLSON RD
CHINOOK, MT 59523

DUSTIN D HOFELDT
20495 BARNEY OLSON RD
CHINOOK, MT 59523 9241

Priority Date: FEBRUARY 6, 1958

Type of Historical Right: FILED

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: 525.00 AC-FT

Climatic Area: 1 - HIGH

Maximum Acres: 350.00

Source Name THIRD 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		SWNWSW	31	24N	30E	PHILLIPS

Period of Diversion: FEBRUARY 1 TO JULY 31

Diversion Means: DIKE

Period of Use: FEBRUARY 1 TO JULY 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	130.60			31	24N	30E	PHILLIPS
2	137.40		S2	32	24N	30E	PHILLIPS
3	82.00		S2S2	33	24N	30E	PHILLIPS

Total: 350.00