

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

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

CLAIMANTS: Donald G. Beecher; Jack T. Lund; Pearl
M. Lund; David F. Rollins; Jeanette J.
Rollins

CASE 40D-0206-R-2023
40D 31516-00
40D 30160055
40D 30160056

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

The claim in this case appeared in the Preliminary Decree for Basin 40D with a Montana Department of Natural Resources and Conservation (DNRC) issue remark. The Case was consolidated into Case 40D-0206-R-2023.

FINDINGS OF FACT

1. A Status Conference took place June 1, 2023, by telephone conference call. Water Master Julia Nordlund presided. All parties were present except for Donald Beecher.

2. The parties stated they wished to pursue the split of the claim in this case.

3. Based on the information submitted in the October 11, 2019 split request, water right claims 40D 30160055 and 40D 30160056 should be created from parent claim 40D 31516-00 as follows:

4. The elements for claim 40D 31516-00 that changed after the split are:

OWNER: Jack and Pearl Lund

PLACE OF USE/POINT OF DIVERSION:

<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				9	14N	38E	GARFIELD
2				4	14N	38E	GARFIELD
3				3	14N	38E	GARFIELD
4				2	14N	38E	GARFIELD
5			S2	4	14N	38E	GARFIELD

5. The elements of new claim 40D 30160055 are the exact same as parent claim 40D 31516-00 except the following elements:

OWNER: David and Jeanette Rollins

PLACE OF USE/POINT OF DIVERSION:

<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				9	14N	38E	GARFIELD
2				4	14N	38E	GARFIELD
3				3	14N	38E	GARFIELD
4				2	14N	38E	GARFIELD
5			S2	4	14N	38E	GARFIELD

6. The elements of new claim 40D 30160056 are the exact same as parent claim 40D 31516-00 except the following elements:

OWNER: Donald Beecher

PLACE OF USE/POINT OF DIVERSION:

<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				9	14N	38E	GARFIELD
2				4	14N	38E	GARFIELD
3				3	14N	38E	GARFIELD
4				2	14N	38E	GARFIELD
5			S2	1	14N	38E	GARFIELD

CONCLUSIONS OF LAW

1. The Montana Water Court has jurisdiction over all matters relating to the determination of existing water rights and may consider any matter within the Court’s jurisdiction on its own motion, or on the motion of an interested party. Section 3-7-224, MCA.

2. Montana law allows claimants to amend their statements of claim, and objectors to amend their timely filed objections after the objection period in a basin has closed. Motions to amend a claim or objection are governed by Section 85-2-233(6), MCA:

(6) After the issuance of a temporary preliminary decree or preliminary decree, notice of any motion to amend a statement of claim or a timely filed objection that may adversely affect other water rights must be published for 3 consecutive weeks in two newspapers of general circulation in the basin where the statement of claim or objection was filed. The notice must specify that any response or objection to the proposed amendment must be filed within 45 days of the date of the last notice. The water judge may order any additional notice of the motion as the water judge considers necessary. The cost of notice required pursuant to this subsection must be borne by the moving party.

3. The splitting of the above claim does not constitute an increase to any of the claims’ elements. The split and changes to point of diversion and place of use only serves to reflect, more accurately, the claim. As a result, the notice requirements found in Section 85-2-233(6), MCA do not apply.

4. 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 an element of the prima facie proof is incorrect. This is the standard of proof for every assertion that a claim is incorrect including claimants objecting to their own claims. Rule 19, W.R.Adj.R.

5. The parties agree that these changes resolve all issue remarks.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above to correct the Preliminary Decree for this Basin.

New Post Decree Abstract of Water Right Claims 40D 30160055 and 40D 30160056 shall be created. All updated Post Decree Abstracts of Water Right Claims are served with this Report to confirm the recommended changes have been made in the state's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS mail:

Beecher, Donald G
PO Box 117
Cohagen, MT 59322

Lund, Jack T
Lund, Pearl M
33 Bridger Circle
Miles City, MT 59301

Rollins, David F
Rollins, Jeanette J
27 Tiburon Dr
The Hills, TX 78738-1558

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

Water Right Number: 40D 31516-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JACK T LUND
33 BRIDGER CIRCLE
MILES CITY, MT 59301

PEARL M LUND
33 BRIDGER CIRCLE
MILES CITY, MT 59301

Priority Date: DECEMBER 31, 1915

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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: LITTLE DRY 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		N2N2NW	9	14N	38E	GARFIELD
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		S2	3	14N	38E	GARFIELD
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3			2	14N	38E	GARFIELD
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

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				9	14N	38E	GARFIELD
2				3	14N	38E	GARFIELD
3				2	14N	38E	GARFIELD

Remarks:

THE SPLIT CLAIMS LISTED FOLLOWING THIS STATEMENT WERE AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM. 40D 30160055, 40D 30160056.

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

Water Right Number: 40D 30160055 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: DAVID F ROLLINS
27 TIBURON DR
THE HILLS, TX 78738 1558

JEANETTE J ROLLINS
27 TIBURON DR
THE HILLS, TX 78738 1558

Priority Date: DECEMBER 31, 1915

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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: LITTLE DRY 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		SE	4	14N	38E	GARFIELD

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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				4	14N	38E	GARFIELD

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 40D 31516-00.

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

Water Right Number: 40D 30160056 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: DONALD G BEECHER
PO BOX 117
COHAGEN, MT 59322

Priority Date: DECEMBER 31, 1915

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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: LITTLE DRY 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		S2	1	14N	38E	GARFIELD

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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			S2	1	14N	38E	GARFIELD

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 40D 31516-00.