

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
DEARBORN RIVER BASIN (41U)
PRELIMINARY DECREE

CLAIMANT: Milford Colony Inc.

CASE 41U-0056-R-2023

41U 9903-00
41U 9907-00
41U 9912-00
41U 9913-00

OBJECTOR: Dearborn Canal Co.

NOTICES OF INTENT TO APPEAR: Dearborn Ranch LLC;
Milford Colony Inc.

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

FINDINGS OF FACT

1. Milford Colony Inc. (Milford) is the record owner of claims 41U 9903-00, 41U 9907-00, 41U 9912-00, and 41U 9913-00.

2. Claims 41U 9903-00, 41U 9907-00, 41U 9912-00, and 41U 9913-00 were decreed with the following DNRC issue remark:

POINT OF DIVERSION, MEANS OF DIVERSION, DITCH NAME AND SOURCE NAME WERE 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.

3. Dearborn Canal Co. (Dearborn Canal) objected to claims 41U 9903-00, 41U 9907-00, 41U 9912-00, and 41U 9913-00; Dearborn Ranch, LLC (Dearborn Ranch) and Milford filed Notices of Intent to Appear for each of the claims.

4. The parties filed a Stipulation resolving the Objections and Notice of Intent to Appear concerns on September 19, 2023. (Doc.¹9.00). The Stipulation also corrects errors the DNRC made during claim examination in preparation for the Preliminary Decree – errors contrary to previous agreements reflected in the January 15, 1987 Master's Report in Case 41U-25, adopted on February 3, 1987.

5. Pursuant to the agreement of the parties, and consistent with the record for claims 41U 9903-00, 41U 9907-00, 41U 9912-00, and 41U 9913-00, the source name for each of the claims should be Hogan Creek, and the only point of diversion reflected on each claim should be a headgate on the Bean-Embody Ditch, in the NWSWNW of Section 33, Township 19 North, Range 8 West, Lewis and Clark County. The period of diversion for all claims should be May 1 to August 15.

CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim as well as any objections received. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

RECOMMENDATIONS

1. Claims 41U 9903-00, 41U 9907-00, 41U 9912-00, and 41U 9913-00 should be modified as described in Finding of Fact No. 5.
2. The issue remarks should be removed from claims 41U 9903-00, 41U 9907-00, 41U 9912-00, and 41U 9913-00.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U

Water Right Number: **41U 9903-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
MILFORD COLONY INC
9605 US HWY 287
WOLF CREEK, MT 59648 8637

***Priority Date:** JULY 6, 1908

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 5.80 CFS

***Volume:** 504.90 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 153.00

Source Name: HOGAN CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWSWNW	33	19N	6W	LEWIS AND CLARK

Period of Diversion: MAY 1 TO AUGUST 15

Diversion Means: HEADGATE

Ditch Name: BEAN-EMBODY DITCH

Period of Use: MAY 1 TO AUGUST 15

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	153.00		S2	33	19N	5W	LEWIS AND CLARK
Total:	153.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

9899-00	9901-00	9902-00	9903-00	9904-00	9905-00
9906-00	9907-00	9908-00	9909-00	9910-00	9911-00
9912-00	9913-00	9914-00			

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

9903-00

9920-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U

Water Right Number: **41U 9907-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
MILFORD COLONY INC
9605 US HWY 287
WOLF CREEK, MT 59648 8637

***Priority Date:** APRIL 30, 1895

THIS WATER RIGHT IS JUNIOR IN PRIORITY TO BARRETT LAND AND LIVESTOCK COMPANY'S STOCKWATER RIGHTS FROM HOGAN CREEK.

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 2.27 CFS

***Volume:** 198.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 60.00

Source Name: HOGAN CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWSWNW	33	19N	6W	LEWIS AND CLARK

Period of Diversion: MAY 1 TO AUGUST 15

Diversion Means: HEADGATE

Ditch Name: BEAN-EMBODY DITCH

Period of Use: MAY 1 TO AUGUST 15

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	60.00		N2NW	4	18N	5W	LEWIS AND CLARK
Total:	60.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

9899-00	9901-00	9902-00	9903-00	9904-00	9905-00
9906-00	9907-00	9908-00	9909-00	9910-00	9911-00
9912-00	9913-00	9914-00			

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U

Water Right Number: **41U 9912-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
MILFORD COLONY INC
9605 US HWY 287
WOLF CREEK, MT 59648 8637

***Priority Date:** JULY 6, 1908

THIS WATER RIGHT IS JUNIOR IN PRIORITY TO BARRETT LAND AND LIVESTOCK COMPANY'S STOCKWATER RIGHTS FROM HOGAN CREEK.

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 86.90 CFS

***Volume:** 7,566.90 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 2,293.00

Source Name: HOGAN CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Otr Sec	Sec	Twp	Rge	County
1		NWSWNW	33	19N	6W	LEWIS AND CLARK

Period of Diversion: MAY 1 TO AUGUST 15

Diversion Means: HEADGATE

Ditch Name: BEAN-EMBODY DITCH

Period of Use: MAY 1 TO AUGUST 15

Place of Use:

ID	Acres	Govt Lot	Otr Sec	Sec	Twp	Rge	County
1	600.00			4	18N	5W	LEWIS AND CLARK
2	600.00			3	18N	5W	LEWIS AND CLARK
3	620.00			2	18N	5W	LEWIS AND CLARK
4	153.00		S2	33	19N	5W	LEWIS AND CLARK
5	320.00		S2	34	19N	5W	LEWIS AND CLARK
Total:	2293.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

9899-00	9901-00	9902-00	9903-00	9904-00	9905-00
9906-00	9907-00	9908-00	9909-00	9910-00	9911-00
9912-00	9913-00	9914-00			

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

9912-00 9920-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U

Water Right Number: **41U 9913-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
MILFORD COLONY INC
9605 US HWY 287
WOLF CREEK, MT 59648 8637

***Priority Date:** APRIL 30, 1895

THIS WATER RIGHT IS JUNIOR IN PRIORITY TO BARRETT LAND AND LIVESTOCK COMPANY'S STOCKWATER RIGHTS FROM HOGAN CREEK.

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 6.06 CFS

***Volume:** 528.00 AC-FT

THE VOLUME QUANTIFICATION ON THIS CLAIM IS THE RESULT OF A STIPULATION FILED BY THE PARTIES WITH THE WATER COURT ON 03/25/1985 . THE COURT HAS MADE NO DETERMINATION AS TO THE NEED FOR A VOLUME QUANTIFICATION ON THIS CLAIM AS PROVIDED FOR IN 85-2-234 (6) (b) (III) M.C.A.

Climatic Area: 3 - MODERATE

Maximum Acres: 160.00

Source Name: HOGAN CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWSWNW	33	19N	6W	LEWIS AND CLARK

Period of Diversion: MAY 1 TO AUGUST 15

Diversion Means: HEADGATE

Ditch Name: BEAN-EMBODY DITCH

Period of Use: MAY 1 TO AUGUST 15

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	80.00		S2SE	4	18N	5W	LEWIS AND CLARK
2	40.00		NWSE	4	18N	5W	LEWIS AND CLARK
3	40.00		NESW	4	18N	5W	LEWIS AND CLARK
Total:	160.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

9899-00	9901-00	9902-00	9903-00	9904-00	9905-00
9906-00	9907-00	9908-00	9909-00	9910-00	9911-00
9912-00	9913-00	9914-00			