

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: Pluhar Ranch Co.

OBJECTOR: Montana State Board of Land
Commissioners

CASE 40D-0021-R-2023
40D 125206-00

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

Claim 40D 125206-00 is owned by Pluhar Ranch Co. (“Pluhar”) and appeared in the Preliminary Decree for the Big Dry Creek (Basin 40D). The claim received an objection from State of Montana Trust Lands Division (“Montana”).

On October 30, 2023, the Court issued an Order in this case giving the parties until December 20, 2023 to submit a status report or settlement documents. No party requested an extension of that deadline or submitted a status report, so the Court issued a Scheduling Order. Since Pluhar Ranch Co. is a company and not an individual, the Court required Pluhar Ranch Co. to gain counsel and have an attorney file a notice of appearance by April 12, 2024. This was not done.

The language of the Scheduling Order stated if Pluhar failed to comply with this requirement, it would not be allowed to present a case at hearing or submit any filings to the Water Court. Nothing was filed so Pluhar was prohibited from participating further in the case.

FINDINGS OF FACT

1. On July 12, 2024, Montana filed a brief and evidence to support its April 30, 2024 Motion to be added as co-owner of claim 40D 125206-00.
2. The place of use ID 4 for claim 40D 125206-00 is the SWSWNE 36, Twp. 16N, Rge. 41E.
3. Montana owns section 36, Twp. 16N, Rge. 41E as school trust land.
4. Pluhar does not claim an ownership interest in section 36, Twp. 16N, Rge. 41E.
5. According to the General Land Office Records, the survey for this property was accepted on June 4, 1910.
6. The priority date for claim 40D 125206-00 is December 31, 1943.
7. Montana does not receive compensation for water used on POU No. 4, but it does receive compensation for livestock grazing on state land pursuant to the lease agreement.

CONCLUSIONS 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, 85-2-102(12), MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA.

3. 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. Rule 19, W.R.Adj.R.

4. 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. Burkhartsmeier 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.

5. When a Claimant fails to comply with an order issued by the Montana Water Court, the Court may issue just sanctions, such as resolution of an issue remark with information obtained by the Court. Rule 22, W.R.Adj.R.

6. Although certain land sections were given to the State by the federal government for school trust purposes in the Enabling Act, title could not vest until after 1) the land was surveyed, 2) the plat was approved by the proper federal authorities, and 3) the State was admitted to the Union. (See *Clemmons v. Gillette*, 33 Mont. 321, 83 P. 879 (1905); *Powell County v. 5 Rockin' MS Angus Ranch, Inc.*, 2004 MT 337, 324 Mont. 204, 102 P.3d 1210(2004)).

7. If, at the time an appropriation is made, the appropriator is a lessee of school trust land and if the lessee makes and uses the appropriation on school trust land, the appropriation is owned by the State of Montana rather than the lessee. *Department of State Lands v. Pettibone*, 216 Mont. 361, 702 P.2d 948 (1985). Implicit in this rule is

the determination that the land was indeed fully vested as state school trust land at the time the appropriation was made. *See Harper, et al. v. Montana, State of, Board of Land Commissioners*, Case 43A-A, at p. 10-13, (Memorandum June 29, 2000); *Hamilton Ranches Partnership v. United States of America, et al.*, Case 41G-190, at p. 32 (Opinion July 19, 2005); and *Huckaba Ranch, Inc. v. Golden Sunlight Mines, Inc.*, Case 41G-3, at p. 7-9, (Opinion August 3, 2005).

8. Similar to the recent *Schutter* case, claim 40D 125206-00 is decreed as appurtenant to both the Pluhar’s private land and State school trust land. The claim relies on State school trust land to put the full measure of the water right to beneficial use. A portion of the State parcel is used to maintain the claim. *In re Schutter*, 2023 Mont. Water LEXIS 443, *8.

9. The land underlying POU ID 4 for claim 40D 125206-00 vested prior to the water right being put to use. The land is in Montana’s ownership. Montana has never received compensation for the use of the water. Therefore, Montana should be added as an owner to claim 40D 125206-00

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, the changes recommended above in the Findings of Fact should be adopted. A Post Decree Abstract of Water Rights Claim is served with the Report to confirm that the recommendations have been made in the State’s centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Pluhar Ranch Co
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Service Via Electronic Mail:

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

Water Right Number: 40D 125206-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620-1601

PLUHAR RANCH CO
PO BOX 345
COHAGEN, MT 59322

Priority Date: DECEMBER 31, 1943

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 12.00 GPM

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: GROUNDWATER

Source Type: GROUNDWATER

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 | | NWNWNE | 26 | 16N | 41E | GARFIELD |

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

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 | | | SWSENE | 26 | 16N | 41E | GARFIELD |
| 2 | | | NWSENE | 27 | 16N | 41E | GARFIELD |
| 3 | | | NESWSW | 25 | 16N | 41E | GARFIELD |
| 4 | | | SWSWNE | 36 | 16N | 41E | GARFIELD |
| 5 | | | NENWNW | 6 | 15N | 42E | GARFIELD |
| 6 | | | NWNWNE | 26 | 16N | 41E | GARFIELD |