

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

**FILED**  
07/16/2024  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
40D-0032-R-2023  
Nordlund, Julia  
9.00

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

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CLAIMANTS: Whiteside Livestock Co.

OBJECTORS: United States of America (Bureau of Land  
Management); Whiteside Livestock Co.

**CASE 40D-0032-R-2023**  
40D 169423-00

**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**

The claim in this case is owned by Whiteside Livestock Co. ("Whiteside") and appeared in the Preliminary Decree for Basin 40D with issue remarks. The claim received objections from USA Bureau of Land Management and Whiteside.

## FINDINGS OF FACT

1. On April 10, 2024, the Parties submitted a Stipulation (“Stipulation”)<sup>1</sup>.
2. It was unclear whether the Stipulation resolved Whiteside’s Objection so the Court set an additional deadline for Whiteside to resolve its Objection. Nothing further was filed.
3. Claim 40D 169423-00 is an irrigation claim from Little Dry Creek as well as an unnamed tributary of Little Dry Creek. The parties agree that the legal land description of the place of use needs further refinement.

4. The place of use for Claim 40D 169423-00 should be clarified as follows:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	39.00		W2NE	E2	18	17N	43E	GARFIELD
2	55.50				7	17N	43E	GARFIELD
3	21.00			NW	12	17N	42E	GARFIELD
<b>Total:</b>	<u>115.50</u>							

5. Claim 40D 169423-00 also has issue remarks which state the water right claims two separate sources and the volume appears to be excessive for the claimed purpose. Neither of these issue remarks overcome the prima facie status of the claim.

## CONCLUSIONS OF LAW

1. 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.

2. 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

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<sup>1</sup> The Stipulation and all other case documents are viewable in the Water Court’s FullCourt Enterprise case management system.

probable than not' to have been met.” *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

3. 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.

4. 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.

5. The evidence entered into the record is sufficient to make the changes to the claim's place of use.

6. The issue remarks do not overcome the prima facie status of the claim and should be removed.

### **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.

A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended corrections have been made in the state's centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS mail:**

Whiteside Livestock Co.  
789 Uall Rd  
PO Box 184  
Angela, MT 59312

**Service Via Electronic Mail:**

McDonald, Eve W.  
US Dept of Justice- ENRD  
999 18th St., So. Terrace, Ste. 370  
Denver, CO 80202  
(303) 844-1381 W  
[Evelyn.Mcdonald@usdoj.gov](mailto:Evelyn.Mcdonald@usdoj.gov)  
[MontanaBasins.ENRD@usdoj.gov](mailto:MontanaBasins.ENRD@usdoj.gov)

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

**Water Right Number:** 40D 169423-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** WHITESIDE LIVESTOCK CO  
789 UALL RD  
PO BOX 184  
ANGELA, MT 59312

**Priority Date:** MARCH 19, 1921

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 11.14 CFS

**Volume:** 173.25 AC-FT

**Climatic Area:** 1 - HIGH

**Maximum Acres:** 115.50

**Source Name:** LITTLE DRY CREEK

**Source Type:** SURFACE WATER

**Source Name:** UNNAMED TRIBUTARY OF 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		SESWNE	18	17N	43E	GARFIELD

**Source Name:** LITTLE DRY CREEK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PUMP

2		NESWSW	7	17N	43E	GARFIELD
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**Source Name:** UNNAMED TRIBUTARY OF LITTLE DRY CREEK

**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>
	NESWSW	7	17N	43E	GARFIELD

**Diversion to Reservoir:** DIVERSION # 2

**Dam Height:** 12.50 FEET

**Depth:** 9.50 FEET

**Surface Area:** 6.30 ACRES

**Capacity:** 23.94 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>
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