

Montana Water Court
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FILED
07/09/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
40D-0246-R-2024
Nordlund, Julia
1.00

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

CLAIMANT: Hooker Livestock Inc.

CASE 40D-0246-R-2024
40D 187602-00

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 187602-00 is owned by Hooker Livestock Inc. The claim was decreed with a DNRC issue remark. No objections, counterobjections, or NOIAs were filed. This claim is consolidated into Water Court Case 40D-0246-R-2024.

FINDINGS OF FACT

1. Claim 40D 187602-00 contains an issue remark stating the following:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON CLERICAL ERROR IN RANGE. THE CORRECT PLACE OF USE NO. 2 LEGAL LAND DESCRIPTION APPEARS TO BE GOVT LOT 11 (NW) SEC 5 TWP 16N RGE 35E GARFIELD COUNTY.

2. The original Statement of Claim for this claim stated that the place of use was in the NENESW Sec. 5, Twp 16N, Rge. 35E. The map attached to the Statement of Claim also included the government lot 11 in the NW Sec. 5 Twp. 16N, Rge. 35E. At some point this portion was added to the place of use but a typo appeared on the range stating 33E.

3. Therefore, it is appropriate to correct the second place of use to the GOVT LOT 11 (NW) SEC 5 TWP 16N RGE 35E GARFIELD COUNTY.

CONCLUSIONS OF LAW

1. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

2. 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.

3. 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.

4. 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.

5. The issues raised by issue remarks must be resolved as part of the adjudication process pursuant to Section 85-2-248, MCA.

6. 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.

7. The place of use for claim 40D 187602-00 is:

<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			NW	5	16N	35E	GARFIELD
2		11	NW	5	16N	35 33E	GARFIELD

RECOMMENDATIONS

The changes recommended above should be adopted. Post Decree Abstracts of Water Rights Claims are 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:

Hooker Livestock Inc
PO Box 23595
Billings, MT 59104

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

Water Right Number: 40D 187602-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: HOOKER LIVESTOCK INC
PO BOX 23595
BILLINGS, MT 59104

***Priority Date:** MAY 25, 1973

Type of Historical Right: USE

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:** 20.00 AC-FT

Climatic Area: 1 - HIGH

Source Name: HAISLETT 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		NENESW	5	16N	35E	GARFIELD

Period of Diversion: APRIL 1 TO SEPTEMBER 30

Diversion Means: DIKE

Period of Use: APRIL 1 TO SEPTEMBER 30

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			NWNESW	5	16N	35E	GARFIELD
2		11	NW	5	16N	35E	GARFIELD