

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
SAGE CREEK BASIN (40G)
PRELIMINARY DECREE

CLAIMANT: Duncan Ranch Co.

CASE 40G-0223-R-2024
40G 44091-00

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, conclusion 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 40G 44091-00 appeared in the Preliminary Decree for Sage Creek (Basin 40G) with issue remarks from the Montana Department of Natural Resources and Conservation's (DNRC).

Claim 41G 44091-00 was consolidated into Case 40G-0223-R-2024 to resolve the issue remarks.

FINDINGS OF FACT

1. Claim 40G 44091-00 received the following substantive issue remarks:

POINT OF DIVERSION NO. 4 AND NO. 5 APPEAR TO BE INCORRECT. POINT OF DIVERSION NO. 4 APPEARS TO BE THE NENWSW SEC 32 TWP 37N RGE 7 E LIBERTY COUNTY. POINT OF DIVERSION NO. 5 APPEARS TO BE THE NESWSE SEC 33 TWP 37N RGE 7 E LIBERTY COUNTY.

THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

2. On April 18, 2024, the Court consolidated the claim and ordered the Claimants to work with the DNRC to resolve the issue remarks.

3. On June 26, 2024, DNRC Water Resources Specialist Jamie Verploegen filed a *Memorandum* in this matter. The *Memo* states that the DNRC was contacted by claimant Bruce Duncan who met with the DNRC on June 19, 2024, to show on a map where the points of diversion are located for claim 40G 44091-00. According to the *Memo*, the points of diversion identified in the issue remark for Id Nos. 4 and 5 are correct based on the map provided by Mr. Duncan. Additionally, the *Memo* states that Mr. Duncan stated to the DNRC that the only source involved with claim 40G 44091-00 is Sage Creek. Therefore, the DNRC recommends the point of diversion be modified as described in the issue remark, the source remain as Sage Creek, and the issue remarks be removed.

4. Claim 40G 44091-00 also received a notice-type issue remark from the DNRC during its claims reexamination. No Objections were filed.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

CONCLUSIONS OF LAW

1. The information in the record is sufficient to resolve the above-listed issue remarks appearing on the claim. Based on the information contained in DNRC Water Resources Specialist Jamie Verploegen's *Memo*, point of diversion Id Nos. 4 and 5 of claim 40G 44091-00 should be modified as described in Finding of Fact No. 1, the source should remain listed as Sage Creek, and the issue remarks should be removed from the claim.

2. The notice-type issue remark appearing on claim 40G 44091-00 served its notice purpose and should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Duncan Ranch Co.
625 2100 Road East
Joplin, MT 59531

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SAGE CREEK
BASIN 40G**

Water Right Number: 40G 44091-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: DUNCAN RANCH CO
625 2100 ROAD EAST
JOPLIN, MT 59531

Priority Date: SEPTEMBER 20, 1904

Type of Historical Right: FILED

Purpose (Use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. 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 STOCK WATERING 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.
THIS RIGHT IS LIMITED TO WATERING FOR 200 ANIMAL UNITS.

THE FOLLOWING STOCKWATER RIGHTS EACH IDENTIFY THE HISTORICAL NUMBER OF ANIMAL UNITS ASSOCIATED WITH EACH APPROPRIATION. EACH OF THESE ANIMAL UNIT QUANTIFICATIONS IS PART OF A SINGLE TOTAL OF 200 ANIMAL UNITS SERVED BY ALL OF THESE RIGHTS. 40G 44091-00, 40G 44092-00, 40G 44094-00, 40G 44103-00, 40G 44104-00, 40G 44106-00, 40G 44107-00

Source Name: SAGE 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		SWSWSW	30	37N	7E	LIBERTY
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	DAM					
2 - SECONDARY		SWSWSW	30	37N	7E	LIBERTY
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	HEADGATE					
3 - SECONDARY		NESENW	32	37N	7E	LIBERTY
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	DAM					
4 - SECONDARY		NENWSW	32	37N	7E	LIBERTY
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	DAM					
5 - SECONDARY		NESWSE	33	37N	7E	LIBERTY
Period of Diversion:	JANUARY 1 TO DECEMBER 31					

Diversion Means: DAM

***Reservoir:** ONSTREAM **Reservoir Name:** UPPER SAGE CREEK RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSWSW	30	37N	7E	LIBERTY

Diversion to Reservoir: DIVERSION # 1

Capacity: 22.20 ACRE-FEET

***Reservoir:** OFFSTREAM **Reservoir Name:** SIDE COULEE RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESENW	32	37N	7E	LIBERTY

Diversion to Reservoir: DIVERSION # 3

Capacity: 63.00 ACRE-FEET

***Reservoir:** ONSTREAM **Reservoir Name:** JOHN LOW RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSW	32	37N	7E	LIBERTY

Diversion to Reservoir: DIVERSION # 4

Capacity: 668.60 ACRE-FEET

***Reservoir:** ONSTREAM **Reservoir Name:** NEW LATTIMER RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSE	33	37N	7E	LIBERTY

Diversion to Reservoir: DIVERSION # 5

Capacity: 4.70 ACRE-FEET

THE DAM FOR POINT OF DIVERSION NO. 3 EXTENDS INTO THE NWSWNE SEC 32 TWP 37N RGE 7E LIBERTY COUNTY.

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			E2SE	25	37N	6E	LIBERTY
2			SWNW	32	37N	6E	LIBERTY
3			SW	30	37N	7E	LIBERTY
4			N2	31	37N	7E	LIBERTY
5			N2	32	37N	7E	LIBERTY
6			NWSW	32	37N	7E	LIBERTY
7			S2SW	33	37N	7E	LIBERTY
8			SWSE	33	37N	7E	LIBERTY

Remarks:

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.

44091-00 44112-00

WHENEVER THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE COMBINED TO SUPPLY WATER FOR THE CLAIMED PURPOSE, EACH IS LIMITED TO THE HISTORICAL 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. 40G 44091-00, 40G 44092-00, 40G 44106-00.