

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: Lacosta Livestock Co.

OBJECTORS: Montana State Board of Land
Commissioners; USA (Dept of Interior
Bureau of Land Mgmt)

CASE 40D-0015-R-2023
40D 152736-00

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

Water right claim 40D 152736-00 appeared in the Preliminary Decree for the Big Dry Creek (Basin 40D) with objections from the United States of America on behalf of the Bureau of Land Management and Montana State Board of Land Commissioners. To address the objections, the Water Court consolidated the claim into Water Court Case 40D-0015-R-2023.

FINDINGS OF FACT

1. Claim 40D 152736-00 is a flood irrigation water right from Sand Creek. It is owned by Lacosta Livestock Co.

2. The United States filed an objection to the place of use/maximum acres, asserting that the place of use inaccurately includes federal lands managed by the Bureau of Land Management. Montana filed an objection to ownership asserting any irrigation on Montana lands would belong to the State.

3. On April 18, 2024, the parties filed a Stipulation to Resolve Objections (“Stipulation”).¹

4. The parties agree to the following to remove federal and state land from the place of use:²

	1	45.00	S2SWSW	16	16N	37E	GARFIELD
1	2	10.00	S2S2SE	17	16N	37E	GARFIELD
2	3	85.00	E2E2	20	16N	37E	GARFIELD
3	4	140.00	W2	21	16N	37E	GARFIELD
4	5	35.00	W2W2	2	16N	37E	GARFIELD
5	6	35.00	E2E2	3	16N	37E	GARFIELD
6	7	290.00	NENW	22	17N	37E	GARFIELD
7		13.00	NE	22	17N	37E	GARFIELD
8		150.00	N2SE	22	17N	37E	GARFIELD
9		72.00	S2S2	22	17N	37E	GARFIELD
		55.00	W2	27	17N	37E	GARFIELD
10	8	180.00	N2NE	27	17N	37E	GARFIELD
11	9	41.00	SESWSW	15	17N	37E	GARFIELD
12	10	3.00	S2SESE	15	17N	37E	GARFIELD
13	11	7.00	S2S2	15	17N	37E	GARFIELD
14	12	9.00					
	Total:	850.00					635.00

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

² Due to DNRC database bugs, the final order of the POU IDs is different than what was requested by the parties, however, the information is the same.

5. The parties agree that these changes will reflect the historically beneficial use of the claim as it existed prior to July 1, 1973, and resolves the United States' objection.

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 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. Settlement agreements are subject to review and approval of the Water Court. Rule 17(a), W.R.Adj.R. If a claimant agrees to reduce or limit an element of a claim, the water court may accept the claimant's requested reduction or limitation without further presentation of evidence, unless there is an unresolved issue remark on the claim, in which case § 85-2-248, MCA must be applied. Rule 17(c), W.R.Adj.R.

5. The Stipulation filed in this case should be accepted by the Court; the Stipulation reduces the place of use of claim 40D 152736-00 to remove federal land.

6. The claim also has two issue remarks for the purpose of providing notice of changes to the claim. The remarks state if no objections are filed to the claim, the

remarks will be removed. The Stipulation and Objections do not address these changes. The remarks have served their purpose and can be removed.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

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

Water Right Number: 40D 152736-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: LACOSTA LIVESTOCK CO
204 CENTRAL AVE
WHITEFISH, MT 59937

Priority Date: AUGUST 24, 1968

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 4,845.00 AC-FT

Climatic Area: 1 - HIGH

Maximum Acres: 835.00

Source Name: SAND 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		N2NENE	29	16N	37E	GARFIELD

***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>
	NENE	29	16N	37E	GARFIELD

Diversion to Reservoir: DIVERSION # 1

Dam Height: 22.00 FEET

Depth: 19.00 FEET

Surface Area: 335.00 ACRES

Capacity: 2,546.00 ACRE-FEET

THE DAM EXTENDS INTO THE SESWSE , SWSESE SEC 20 TWP 16N RGE 37E GARFIELD COUNTY.

Period of Use: APRIL 15 TO OCTOBER 15

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	35.00		W2W2	2	16N	37E	GARFIELD
2	35.00		E2E2	3	16N	37E	GARFIELD
3	10.00		S2S2SE	17	16N	37E	GARFIELD

4	85.00	E2E2	20	16N	37E	GARFIELD
5	140.00	W2	21	16N	37E	GARFIELD
6	9.00	W2SWNE	15	17N	37E	GARFIELD
7	7.00	S2SESE	15	17N	37E	GARFIELD
8	3.00	SESWSE	15	17N	37E	GARFIELD
9	13.00	NENW	22	17N	37E	GARFIELD
10	41.00	N2NE	27	17N	37E	GARFIELD
11	180.00	W2	27	17N	37E	GARFIELD
12	150.00	NE	22	17N	37E	GARFIELD
13	72.00	N2SE	22	17N	37E	GARFIELD
14	55.00	S2S2	22	17N	37E	GARFIELD
Total:	<u>835.00</u>					

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.

152736-00

152737-00