

Montana Water Court
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**IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MISSOURI RIVER ABOVE HOLTER DAM BASIN (41I)
PRELIMINARY DECREE**

CLAIMANTS: Davis Bar Triangle T Ranch Inc.; D D Davis
Ranch Co.; Three D Ranch Co.

CASE 41I-0063-R-2023
41I 11136-00

OBJECTOR: Montana State Board of Land Commissioners

NOTICE OF INTENT TO APPEAR: Elliott Ranch LLC;
Joseph P. Nelson

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 41I 11136-00 appeared in the Preliminary Decree for the Missouri River Above Holter Dam (Basin 41I) issued on June 24, 2022. The claim is co-owned by Davis Bar Triangle T Ranch Inc., D D Davis Ranch Co., and Three D Ranch Co. The State of

Montana Board of Land Commissioners, Trust Land Management Division (TLMD) objected to the claim. The claim also received issue remarks. Issue remarks are notations identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

FINDINGS OF FACT

1. Claim 41I 11136-00 was decreed as a claim for fish raceways in the N2NW of Section 26, T5N, R2E, Broadwater County. TLMD objected to the claim, stating:

This claim has never been perfected and should be withdrawn.

The claimed fish raceways project (POU) is on State property and has never been completed or used.

2. The claim also received the following issue remarks:

THE CLAIMED FLOW RATE WAS NOT EXAMINED AS NO FLOW RATE GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIM EXAMINATION RULES.

OWNERS DAVIS BAR TRIANGLE T RANCH CO AND THREE D RANCH CO WERE ADDED BASED ON TRANSFERS RECEIVED 12/21/1988. OWNERSHIP OF THE WATER RIGHT IS UNCLEAR. OWNERS LISTED APPEAR TO REPRESENT BONE FIDE INTEREST THAT CONFLICT. SEE DNRC MEMORANDUM DATED JANUARY 18, 1991 IN CLAIM FILE.

SOURCE NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE PRIORITY DATE IS QUESTIONABLE. CASE 921, BROADWATER COUNTY, DOES NOT SPECIFY A MONTH OR DAY BUT DECREED THE RIGHTS AS 'CONTEMPORANEOUS & WITHOUT PRIORITY AS BETWEEN SAID PARTIES'. THE CLAIMS FOLLOWING THIS STATEMENT ALL CLAIMED MAY 23, 1869. 41I 11117-00, 41I 11120-00, 41I 11121-00, 41I 11122-00, 41I 11123-00, 41I 11124-00, 41I 11125-00, 41I 11126-00, 41I 11127-00, 41I 11128-00, 41I 11129-00, 41I 11130-00, 41I 11131-00, 41I 11132-00, 41I 11133-00, 41I 11134-00, 41I 11135-00, 41I 11136-00, 41I 11137-00, 41I 11138-00, 41I 11139-00, 41I 11140-00, 41I 11141-00, 41I 11142-00.

IT APPEARS THIS WATER RIGHT MAY NOT HAVE BEEN PERFECTED. ACCORDING TO INFORMATION IN THE CLAIM FILE, THE FISH RACEWAYS PROJECT WAS NEVER COMPLETED OR USED.

THE CLAIMED VOLUME WAS NOT EXAMINED AS NO VOLUME GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIMS EXAMINATION RULES.

THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 6743.62 ACRE-FEET PER YEAR.

3. On January 8, 2024, Davis Bar Triangle T Ranch Inc. filed their *Request to Withdraw Statement of Claim*. The *Request* states that Davis Bar Triangle T Ranch Inc. is withdrawing its interest in claim 41I 11136-00 “on the grounds that the water right was never perfected.” (Doc.¹ 3.00).

4. On January 11, 2024, the Court held a status conference in this matter. D D Davis Ranch Co. and Three D Ranch Co. did not appear.

5. Based on D D Davis Ranch Co. and Three D Ranch Co.’s failure to appear at the status conference and in light of the withdrawal filed by Davis Bar Triangle T Ranch Inc., the Court ordered D D Davis Ranch Co. and Three D Ranch Co. to file

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

statements by February 9, 2024 indicating whether they agree with Davis Bar Triangle T Ranch Inc.'s position that claim 41I 11136-00 was never perfected.

6. On February 12, 2024, R & L Ranch Co., apparent successor-in-interest to D D Davis Ranch Co.², filed a withdrawal of interest. Nothing was filed by Three D Ranch Co.

7. The Court set a final deadline for the parties to file evidence showing why claim 41I 11136-00 should not be dismissed for non-perfection. The order stated that if nothing was filed by the deadline, claim 41I 11136-00 would be dismissed. Nothing was filed by the deadline.

PRINCIPLES OF LAW

1. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

2. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

3. Sanctions applied against a claimant may include modification of a claim to conform with data provided by the DNRC, information obtained by the Court, or information included in an objection, or the entry of default and termination of a water right claim. Rule 11, W.R.Adj.R.

CONCLUSION OF LAW

1. Based on Davis Bar Triangle T Ranch Inc.'s *Request* and Rule 22, W.R.Adj.R., claim 41I 11136-00 should be dismissed.

RECOMMENDATION

1. Claim 41I 11136-00 should be dismissed.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

² No documentation was submitted with R & L Ranch Co.'s withdrawal showing the transfer of D D Davis Ranch Co.'s ownership of claim 41I 11136-00 to R & L Ranch Co. Additionally, no ownership updates have been processed in the DNRC's database.

Service via USPS Mail

D D Ranch Co
131 Dry Hollow Rd
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Three D Ranch Co
% Darrel D Davis
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Notice: Service List Updated 6.14.24

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I**

Water Right Number: 41I 11136-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: DAVIS BAR TRIANGLE T RANCH INC
% WILLIAM L DAVIS
379 FLYNN LN
TOWNSEND, MT 59644-9729

DAVIS, D D RANCH CO
R & L RANCH
131 DRY HOLLOW RD
%ROBERT AND LINDA DAVIS
TOWNSEND, MT 59644-9797

THREE D RANCH CO
% DARREL D DAVIS
21 DRY HOLLOW RD
TOWNSEND, MT 59644

Priority Date:

Type of Historical Right:

Purpose (Use): FISH RACEWAYS

Flow Rate:

Volume:

Source Name: SPRING, BIG SPRINGS

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.