

Montana Water Court
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FILED
05/06/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
40D-0013-R-2023
Nordlund, Julia
6.00

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

CLAIMANTS: Alan L. Hooker Trust; Mildred F. Hooker
Trust

OBJECTORS: United States of America Bureau of Land
Management

CASE 40D-0013-R-2023
40D 179378-00
40D 179397-00

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 claims 40D 179378-00 and 40D 179397-00 appeared in the Preliminary Decree for the Big Dry Creek (Basin 40D). The Alan L. Hooker Trust and the Mildred F. Hooker Trust own the claims. The United States of America, on behalf of the Bureau of Land Management, filed objections to both claims. To address the objections, the Water Court consolidated the claims into Water Court Case 40D-0013-R-2023.

FINDINGS OF FACT

1. Claim 40D 179378-00 is a stockwater right. Claim 40D 179397-00 is an irrigation right from Dugout Coulee.
2. The United States filed an objection to the place of use/point of diversion for claim 40D 179378-00. It also filed an objection to all elements, the place of use/maximum acres, and abandonment/non-perfection for claim 40D 179397-00.
3. On March 18, 2024, the parties filed a Stipulation to Resolve Objections (“Stipulation”).¹
4. The parties agree the place of use of claim 40D 179378-00 should be amended as follows:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SE	<u>23</u> 26	16N	34E	GARFIELD

5. The parties agree that the place of use and maximum acres of claim 40D 179397-00 should be amended as follows:

<u>ID</u>	<u>Acres</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
1	20.00 <u>3.00</u>	<u>N</u>	<u>SWSE</u> S2	10	16N	34E	GARFIELD
<u>2</u>	<u>9.00</u>	<u>S</u>	<u>2N2SW</u>	<u>10</u>	<u>16N</u>	<u>34E</u>	<u>GARFIELD</u>
Total:	20.00 <u>12.00</u>						

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

6. The modifications remove federal land from the place of use legal land description. The parties provide maps that delineate the federal land from the private land within the place of use to support the modifications.

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.

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 does not seek to enlarge the claim. Rather, it seeks to refine the point of diversion and means of diversion on the claim abstract to conform the actual historical use of the claim on the ground. The changes are supported by historical usage

which is depicted in the maps provided by the parties. The Stipulation should be accepted.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the Water Court adopt the above-specified changes. Post Decree Abstracts accompany this Report to confirm the remarks have been made in the State's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS mail:

Alan L. Hooker Trust
Milfred F. Hooker Trust
% US Bank, Trustee Attn: Treston Vermandel
PO Box 30678
Billings, MT 59115

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
MontanaBasins.ENRD@USDOJ.GOV

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

Water Right Number: 40D 179378-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: HOOKER, ALAN L TRUST
% US BANK, TRUSTEE ATTN: TRESTON VERMANDEL
PO BOX 30678
BILLINGS, MT 59115

HOOKER, MILDRED F TRUST
% US BANK, TRUSTEE ATTN: TRESTON VERMANDEL
PO BOX 30678
BILLINGS, MT 59115

Priority Date: DECEMBER 31, 1961

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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 STOCKWATERING 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.

Source Name: SPRING, UNNAMED TRIBUTARY OF BIG DRY CREEK

Source Type: GROUNDWATER

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		SENE SW	23	16N	34E	GARFIELD

Period of Diversion: JUNE 1 TO NOVEMBER 30

Diversion Means: FLOWING

Period of Use: JUNE 1 TO NOVEMBER 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			SENE SW	23	16N	34E	GARFIELD

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

Water Right Number: 40D 179397-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: HOOKER, ALAN L TRUST
% US BANK, TRUSTEE ATTN: TRESTON VERMANDEL
PO BOX 30678
BILLINGS, MT 59115

HOOKER, MILDRED F TRUST
% US BANK, TRUSTEE ATTN: TRESTON VERMANDEL
PO BOX 30678
BILLINGS, MT 59115

Priority Date: DECEMBER 31, 1955

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: 40.00 AC-FT

Climatic Area: 1 - HIGH

Maximum Acres: 12.00

Source Name: DUGOUT COULEE

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		NWSWSE	10	16N	34E	GARFIELD

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: DIKE

Period of Use: APRIL 1 TO OCTOBER 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	3.00		NWSWSE	10	16N	34E	GARFIELD
2	9.00		S2N2SW	10	16N	34E	GARFIELD

Total: 12.00

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.

164614-00

179397-00