

Montana Water Court
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FILED
05/09/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
40D-0016-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: Langs Fork Inc.

OBJECTORS: United States of America (Bureau of Land
Management)

CASE 40D-0016-R-2023
40D 106016-00

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 106016-00 appeared in the Preliminary Decree for the Big Dry Creek (Basin 40D). Langs Fork Inc. owns the claim. The United States of America, on behalf of the Bureau of Land Management, filed objections to the claim. To address the objections, the Water Court consolidated the claim into Water Court Case 40D-0016-R-2023.

FINDINGS OF FACT

1. Claim 40D 106016-00 is a flood irrigation right from an onstream reservoir on an unnamed tributary of Langs Fork Creek.
2. On April 4, 2024, the parties filed a Stipulation to Resolve Objections (“Stipulation”).¹
3. The parties agree that the volume of claim 40D 106016-00 should be reduced from 147 acre-feet to 92 acre-feet.
4. The parties agree the place of use of claim 40D 106016-00 should be amended as follows:

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|---------------------|------------|------------|------------|---------------|
| 1 | 8.00 | | <u>SE</u> <u>NW</u> | 20 | 17N | 40E | GARFIELD |
| 2 | 32.00 | | W2NE | 20 | 17N | 40E | GARFIELD |
| Total: | 40.00 | | | | | | |

5. 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

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

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. *Burkhartsmeyer et al. v. Burkhartsmeyer 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 does not seek to enlarge the claim. Rather, it seeks to reduce the volume and refine the place of use 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. A Post Decree Abstract accompanies this Report to confirm the above changes have been made in the State’s centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS mail:

Langs Fork Inc.
PO Box 324
Cohagen, MT 59322

Service Via Electronic Mail:

McDonald, Eve W.
US Dept Of Justice -ENRD
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Denver, CO 80202
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Evelyn.Mcdonald@usdoj.gov
MontanaBasins.ENRD@usdoj.gov

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

Water Right Number: 40D 106016-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: LANGS FORK INC
PO BOX 324
COHAGEN, MT 59322

Priority Date: OCTOBER 1, 1950

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 92.00 AC-FT

Climatic Area: 1 - HIGH

Maximum Acres: 40.00

Source Name: UNNAMED TRIBUTARY OF LANGS FORK 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 | | SWNENW | 20 | 17N | 40E | 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> |
|-----------------|----------------|------------|------------|------------|---------------|
| | SWNENW | 20 | 17N | 40E | GARFIELD |

Diversion to Reservoir: DIVERSION # 1

Dam Height: 17.50 FEET

Depth: 13.50 FEET

Surface Area: 1.12 ACRES

Capacity: 6.05 ACRE-FEET

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 | 8.00 | | SENW | 20 | 17N | 40E | GARFIELD |
| 2 | 32.00 | | W2NE | 20 | 17N | 40E | GARFIELD |

Total: 40.00

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.

106013-00

106016-00