

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

CLAIMANTS: Pfaff Ranch Inc.

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

CASE 40D-0020-R-2023
40D 1668-00

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 1668-00 appeared in the Preliminary Decree for the Big Dry Creek (Basin 40D) and received an objection from the United States of America on behalf of the Bureau of Land Management. The claim did not receive any Montana Department of Natural Resources and Conservation issue remarks, counterobjections, or notices of intent to appear. To address the United States' objection, the Water Court consolidated the claim into Water Court Case 40D-0020-R-2023.

FINDINGS OF FACT

1. Claim 40D 1668-00 is a water spreading irrigation water right from Wolf Creek. It is owned by Pfaff Ranch Inc.
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.
3. On April 1, 2024, the parties filed a Stipulation to Resolve Objections (“Stipulation”).¹
4. The parties agree to the following to remove federal land from the place of use:

1. The maximum acres for claim 40D 1668-00 should be reduced to 20.10.

2. The place of use for claim 40D 1668-00 should be amended as follows:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	3.80		E2NESW	18	13N	45E	PRAIRIE
2	2.50		E2SESW	18	13N	45E	PRAIRIE
3	6.90		W2SWSE	18	13N	45E	PRAIRIE
4	6.90		W2NWSE	18	13N	45E	PRAIRIE
5	4.90		SESENW	18	13N	45E	PRAIRIE
Total: 22.00 <u>20.10</u>							

5. The parties agree that removing place of use No. 5 will reflect the historical beneficial use of the claim as it existed prior to July 1, 1973 and resolves the United States' objection.

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

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 1668-00 to remove federal land.

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 1668-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PFAFF RANCH INC
203 DEADMANS RD
MILES CITY, MT 59301-7200

Priority Date: DECEMBER 31, 1960

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: 50.60 AC-FT

Climatic Area: 1 - HIGH

Maximum Acres: 20.10

Source Name: WOLF CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr	Sec	Twp	Rge	County
1		S2	18	13N	45E	PRAIRIE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DIKE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr	Sec	Twp	Rge	County
1	6.90		W2NWSE	18	13N	45E	PRAIRIE
2	6.90		W2SWSE	18	13N	45E	PRAIRIE
3	3.80		E2NESW	18	13N	45E	PRAIRIE
4	2.50		E2SESW	18	13N	45E	PRAIRIE
Total:	20.10						