

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-0223-R-2023
Nordlund, Julia
8.00

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

CLAIMANT: Devlin Ranch Co.

CASE 40D-0223-R-2023
40D 174598-00

NOTICE OF FILING OF AMENDED MASTER'S REPORT

This Amended Master's Report was filed with the Clerk of the Montana Water Court. Please review this report carefully. You may file a written objection to the Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations.

The above stamped date indicates the date the Amended Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to the Amended Master's Report must be filed within 10 days of the date of the Amended Master's Report. Because the 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. This means your objection must be received no later than **13 days** from the above stamped date.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of the Amended 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 Amended Master's Report.

AMENDED MASTER’S REPORT

On February 29, 2024, a Master’s Report containing Findings of Fact and Conclusions of Law was filed in this case. The Master’s Report was filed after the Claimant did not respond to the Court’s show cause deadline. The Court stated it would adopt a recommendation made by the Montana Department of Natural Resources and Conservation (“DNRC”) to resolve the issue remark placed on claim 40D 174598-00 if no response was filed. The claimant did not file an objection to the Master’s Report, so the Court adopted it and closed the case on March 18, 2024.

On April 1, 2024, Claimant Devlin Ranch Co filed a response providing the location of the claimed reservoir, which was the main issue presented in this case. On April 8, 2024, the Court accepted the response as a late objection to the Master’s Report and reopened the case.

FINDINGS OF FACT

1. Claimant states that the reservoir for claim 40D 174598-00 is located in the SWNESW of Section 11, T13N, R46E.
2. Upon a review of the maps in the DNRC’s Water Right Query System, there is a reservoir in the SWNESW of Section 11.
3. The reservoir previously identified by the DNRC and discussed in the Memorandum¹ filed on December 14, 2023 and adopted in the Master’s Report filed on February 29, 2024, is not the reservoir utilized by the Claimant under this claim 40D 174598-00.
4. The location of the reservoir used by the Claimant is the SWNESW of Section 11, T13N, R46E.
5. As this is an onstream stock reservoir, the place of use should match the point of diversion and reservoir location.

¹ The DNRC’s memorandum 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. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

5. The evidence in the record supports the corrections outlined above.

RECOMMENDATIONS

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

Service via USPS Mail:

Devlin Ranch Co.
PO Box 186
Terry, MT 59349-0186

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

Water Right Number: 40D 174598-00 STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: ACTIVE

Owners: DEVLIN RANCH CO
PO BOX 186
TERRY, MT 59349-0186

Priority Date: DECEMBER 31, 1957

Type of Historical Right: USE

Purpose (Use): STOCK

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

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: UNNAMED TRIBUTARY OF WHITES 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		SWNESW	11	13N	46E	PRAIRIE

***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>
	SWNESW	11	13N	46E	PRAIRIE

Diversion to Reservoir: DIVERSION # 1

Period of Use: APRIL 1 TO OCTOBER 1

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			SWNESW	11	13N	46E	PRAIRIE