

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-0293-R-2023
Nordlund, Julia
2.00

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

CLAIMANTS: Mary M. Singleton

**CASE 40D-0293-R-2023
40D 43297-00**

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 43297-00 appeared in the Preliminary Decree for the Big Dry Creek (Basin 40D) with issue remarks from pre-decree examination by the Department of Natural Resources and Conservation (“DNRC”). To address the issue remarks, the Water Court consolidated the claims into case 40D-0293-R-2023.

FINDINGS OF FACT

1. Claim 40D 43297-00 received the following issue remarks:

THE CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

THE CLAIMED POINT OF DIVERSION MAY BE INCOMPLETE. IT APPEARS THERE SHOULD BE ADDITIONAL POINTS OF DIVERSION ON TREE CREEK WHICH COULD NOT BE IDENTIFIED FROM INFORMATION IN THE CLAIM FILE.

2. Claimant Mary Singleton was given until January 31, 2024, to file evidence to resolve the issue remarks. The Court stated if nothing was filed by the deadline, the Court would assume the Claimant agrees with the DNRC’s determinations and may add a source and points of diversion to match what the issue remarks state.

3. The Claimant filed nothing.

4. Claim 40D 43297-00 is an irrigation claim from Neuhardt Coulee. Jay Singleton filed the Statement of Claim for claim 40D 43297-00 on November 16, 1981. Singleton attached a Notice of Appropriation signed by Merle Singleton that claimed, “The water of Tree Coulee and the tributaries thereof running into Crow Rock Creek from the east.” Also attached to the Statement of Claim is a hand-drawn map that suggests multiple points of diversion for the claim within the S2 of Section 28.

5. During examination of the claim, the DNRC changed the source name from Tree Creek to Neuhardt Coulee.

6. The hand-drawn map attached to the Statement of Claim and other maps in the Claim File, show the only source is Neuhardt Coulee despite the Notice of Water Right claiming multiple sources.

7. There is no additional evidence of multiple points of diversion on Neuhardt Coulee for the claim. There is only sufficient evidence to support one point of diversion.

8. The DNRC issue remarks should be removed.

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 status may be overcome by a preponderance of the evidence showing that an element of the claim is incorrect. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33.

2. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248(2). The Court has authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

3. When resolving issue remarks, the Water Court must weigh the issue remark and the information resulting in the issue remark against the claimed water right. Section 85-2-247(2), MCA. The Court is permitted to use information submitted by DNRC, 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. There is not enough evidence supporting additional points of diversion and sources. This combined with the lack of participation from Claimant results in no changes being made to the claim.

5. The issue remarks appearing on the claim do not overcome the prima facie status of the claim. Both issue remarks should be removed.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the Water Court make the above-specified changes. A Post Decree Abstract accompanies this Report to confirm the remarks have been removed in the State’s centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS mail:

Singleton, Mary M.
766 Crow Rock Rd.
Miles City, MT 59301-6314

Note: Caption updated 5-2-24

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

Water Right Number: 40D 43297-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MARY M SINGLETON
766 CROW ROCK RD
MILES CITY, MT 59301-6314

Priority Date: DECEMBER 31, 1950

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: 46.00 AC-FT

Climatic Area: 1 - HIGH

Maximum Acres: 20.00

Source Name: NEUHARDT COULEE

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2	28	15N	44E	GARFIELD

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DIKE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<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	20.00		S2	28	15N	44E	GARFIELD

Total: 20.00