

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: Hooker Cattle Co.

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

**CASE 40D-0012-R-2023**  
40D 179396-00

**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**

The claim in this case is owned by Hooker Cattle Co. and appeared in the Preliminary Decree for Basin 40D with an issue remark and received an Objection from USA Bureau of Land Management.

**FINDINGS OF FACT**

1. On January 24, 2024, the Parties submitted a Stipulation (“Stipulation”).
2. Claim 40D 179396-00 is a water spreading irrigation claim from an unnamed tributary of Big Dry Creek. The parties agree that the legal land description of the place of use needs further refinement.
3. The place of use for Claim 40D 179396-00 should be clarified as follows:

**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	<del>4.00</del> 3.00	SESWNE	N2NESE	2	15N	34E	GARFIELD
2	<del>38.00</del> 51.00		SW	1	15N	34E	GARFIELD
3	10.00		NWSE	1	15N	34E	GARFIELD
4	10.00		SWNE	1	15N	34E	GARFIELD
5	<del>14.00</del> 1.00	W2SENE	SESE	1	15N	34E	GARFIELD
6	<del>4.00</del> 5.00		S2SENE	2	15N	34E	GARFIELD
<b>Total:</b>	<b>80.00</b>						

4. Claim 40D 179396-00 also has an issue remark which states the location of the dike cannot be identified from available data. The Stipulation and attached aerial photographs show the dike in the NENWSE Sec. 2, as decreed.

**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 entered into the record is sufficient to make the changes to the claim's place of use and resolve the issue remark.

### **RECOMMENDATIONS**

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above to correct the Preliminary Decree for this Basin.

A Post Decree Abstract of Water Right Claim is served with this 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:**

Hooker Cattle Co.  
873 Hedgesville Rd.  
Ryegate, MT 59074

#### **Service Via Electronic Mail:**

Mcdonald, Eve W  
US Dept of Justice -ENRD  
999 18th St, So. Terrace, Ste 370  
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[Evelyn.Mcdonald@Usdoj.Gov](mailto:Evelyn.Mcdonald@Usdoj.Gov)  
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**POST DECREE  
 ABSTRACT OF WATER RIGHT CLAIM  
 BIG DRY CREEK  
 BASIN 40D**

**Water Right Number:** 40D 179396-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** HOOKER CATTLE CO  
 873 HEDGESVILLE RD  
 RYEGATE, MT 59074

**Priority Date:** DECEMBER 31, 1956

**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:** 160.00 AC-FT

**Climatic Area:** 1 - HIGH

**Maximum Acres:** 80.00

**Source Name:** UNNAMED TRIBUTARY OF BIG DRY 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		NENWSE	2	15N	34E	GARFIELD

**Period of Diversion:** APRIL 1 TO SEPTEMBER 30

**Diversion Means:** DIKE

**Period of Use:** APRIL 1 TO SEPTEMBER 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	3.00		SESWNE	2	15N	34E	GARFIELD
2	51.00		SW	1	15N	34E	GARFIELD
3	10.00		NWSE	1	15N	34E	GARFIELD
4	10.00		SWNE	1	15N	34E	GARFIELD
5	1.00		W2SENE	1	15N	34E	GARFIELD
6	5.00		S2SENE	2	15N	34E	GARFIELD

**Total:** 80.00