

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

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

CLAIMANT: Tyler M. Murnion

OBJECTOR: USA (Dept of Interior Bureau of Land
Mgmt)

CASE 40D-0019-R-2023
40D 152731-00

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

Claim 40D 152731-00 appeared in the Preliminary Decree for Big Dry Creek (Basin 40D). The claim received an issue remark from the Montana Department of Natural Resources and Conservation and an objection from the United States of America (Dept. of Interior Bureau of Land Management). Tyler M. Murnion owns the claim. On October 30, 2023, the claim was consolidated into Water Court Case 40D-0019-R-2023 to address the objection.

FINDINGS OF FACT

1. Claim 40D 152731-00 is a water spreading irrigation claim from Vail Creek.
2. The United States filed an objection to the place of use/maximum acres. The objection states that Place of Use No. 1 contains federal lands managed by the BLM and should be refined.
3. On December 12, 2023, the United States filed a Stipulation to Resolve Objection (“Stipulation”).¹ The United States and Claimant agree that the place of use of claim 40D 152731-00 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	12.00		<u>N2SW</u>	SW	32	19N 38E	GARFIELD
Total:	12.00						

4. The issue remark appearing on the claim is to notify water users of the DNRC’s modification to the point of diversion. The modification did not receive any objections.

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

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

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 supports making the correction outlined above and should be accepted by the Court.

6. The notice-type issue remark appearing on the claim has served its purpose and should be removed.

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 correction has been made in the state’s centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Tyler M. Murnion
PO Box 65
Jordan, MT 59337

Service via USPS Mail:

Eve McDonald, Attorney
US Dept of Justice-ENRD
999 18th Street, South Terrace Suite 370
Denver, CO 80202
(303) 844-1381
evelyn.mcdonald@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV

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

Water Right Number: 40D 152731-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: TYLER M MURNION
PO BOX 65
JORDAN, MT 59337

Priority Date: DECEMBER 31, 1957

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: 18.00 AC-FT

Climatic Area: 1 - HIGH

Maximum Acres: 12.00

Source Name: VAIL 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		NWSESW	32	19N	38E	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 Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	12.00		N2SW	32	19N	38E	GARFIELD

Total: 12.00