

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

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CLAIMANTS: Lee Ranch

**CASE 40D-0258-R-2023**

40D 27906-00

40D 27912-00

**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

Claims 40D 27906-00 and 40D 27912-00 appeared in the Preliminary Decree for Big Dry Creek (Basin 40D) with Montana Department of Natural Resources and Conservation (“DNRC”) issue remarks. Lee Ranch owns the claims. On November 29, 2023, the claims were consolidated into Water Court Case 40D-0258-R-2023 to resolve the issue remarks.

### FINDINGS OF FACT

1. Claim 40D 27906-00 is a stock claim from an onstream reservoir on an unnamed tributary of Bootjack Creek. The claim received the following issue remark:

THE PLACE OF USE APPEARS TO BE IN THE SWSENE SEC 3 TWP 12N RGE 41E GARFIELD COUNTY. <sup>1</sup>

2. Claim 40D 27912-00 is a stock claim from an onstream reservoir on an unnamed tributary of Thompson Creek.

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE NWSENE SEC 12 TWP 12N RGE 41E ROSEBUD COUNTY.

3. In the consolidation order, a deadline was set for the Claimant to file evidence to resolve the issue remarks. The consolidation order stated that if nothing was filed by the deadline, the Court will assume the Claimant agrees with the DNRC determinations.

4. On December 5, 2023, Robert Lee contacted the Water Court and stated the location of the onstream reservoir for claim 40D 27912-00 is in the NENE of Section 11, T12N, R41E with the dam just over the section line into Section 12. He attached two Farm Service Agency maps to support his assertion.

5. The Claimant did not provide any evidence for the place of use for claim 40D 27906-00. It is presumed that the Claimant agrees with the DNRC’s determination about the place of use for claim 40D 27906-00.

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<sup>1</sup> The issue remark states the place of use is in Garfield County, however, this appears to be a typographical error as the place of use and points of diversion for this claim reside in Rosebud County.

6. The remaining remarks appearing on the claims are for the purpose of providing notice to other water users. They have served such purpose.

### 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 and resolves the issue remarks.

### RECOMMENDATIONS

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

Post Decree Abstracts of Water Right Claim are 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:**

Lee Ranch  
PO Box 23  
Forsyth, MT 59327

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

**Water Right Number:** 40D 27906-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** LEE RANCH  
PO BOX 23  
FORSYTH, MT 59327

**Priority Date:** DECEMBER 31, 1959

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**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 BOOTJACK 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		SWSENE	3	12N	41E	ROSEBUD

**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>
	SWSENE	3	12N	41E	ROSEBUD

**Diversion to Reservoir:** DIVERSION # 1

**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			SWSENE	3	12N	41E	ROSEBUD

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

**Water Right Number:** 40D 27912-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** LEE RANCH  
PO BOX 23  
FORSYTH, MT 59327

**Priority Date:** DECEMBER 31, 1969

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**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 THOMPSON 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		NENE	11	12N	41E	ROSEBUD

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PIT

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENE	11	12N	41E	ROSEBUD

**Diversion to Reservoir:** DIVERSION # 1

**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			NENE	11	12N	41E	ROSEBUD