

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: Dean R Rogge; Tanna R Rogge

CASE 40D-0287-R-2023
40D 38784-00

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 38784-00 is a stock claim owned by Tanna and Dean Rogge. The claim appeared in the Preliminary Decree for Basin 40D with DNRC issue remarks and was consolidated into Water Court Case 40D-0287-R-2023.

FINDINGS OF FACT

1. Claim 40D 38784-00 received the following DNRC issue remarks:

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

2. On December 19, 2023, DNRC Water Resource Specialist Ryan Hartwell filed a Memorandum¹ including his review of the issue remark. Mr. Hartwell indicated that Claimants contacted him to discuss resolution of the issue remark.

3. Claimants filed an affidavit and map to describe the location of the reservoir. These are attached to the DNRC Memorandum.

4. The Affidavit states the land description for the water right was filed incorrectly as the SENENE Sec. 4, Twp. 17N, Rge. 34E. The dam/reservoir is located in the **SWSW Sec. 34, Twp. 18N, Rge. 34E**. The attached map confirms there is a reservoir in that location.

5. Mr. Hartwell states he reviewed a WRS aerial photograph dated 7/11/1968 which confirms the reservoir was in existence in the updated location and being used prior to 1973.

6. The Memorandum recommends correcting the point of diversion and reservoir. As this is a stock reservoir, the place of use should be changed as well.

7. The information provided resolves the issue remark in this case.

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

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

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. *Burkhartsmeyer et al. v. Burkhartsmeyer 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. The evidence entered into the record is sufficient to resolve the issue remark on this claim and support making the correction to the point of diversion, reservoir record, and place of use as outlined above.

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.

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:

Rogge, Dean R
Rogge, Tanna R
24 N Lodge Pole Rd
Sand Springs, MT 59077

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

Water Right Number: 40D 38784-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DEAN R ROGGE
24 N LODGE POLE RD
SAND SPRINGS, MT 59077

TANNA R ROGGE
24 N LODGE POLE RD
SAND SPRINGS, MT 59077-9506

Priority Date: DECEMBER 31, 1945

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 STEVE FORKS

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		SWSW	34	18N	34E	GARFIELD

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>
	SWSW	34	18N	34E	GARFIELD

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			SWSW	34	18N	34E	GARFIELD