

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: Santo Arroyo Trust

CASE 40D-0290-R-2023
40D 101329-00

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 101329-00 appeared in the Preliminary Decree for Big Dry Creek (Basin 40D) with a Montana Department of Natural Resources and Conservation (“DNRC”) issue remark. Santo Arroyo Trust owns the claim. On October 27, 2023, the claim was consolidated into Water Court Case 40D-0290-R-2023 to resolve the issue remark.

FINDINGS OF FACT

1. Claim 40D 101329-00 is a stock claim from a groundwater well. The claim received the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE WELL CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

2. In the consolidation order, a deadline was set for the Claimant to file evidence to resolve the issue remark.

3. On December 1, 2023, Frank Edwards, Trustee for Santo Arroyo Trust, contacted the Water Court and stated the location of claim 40D 101329-00 is in the NESE of Section 30, T16N, R38E as the preliminary decree abstract claims. He states the claim is a spring that has been developed and also includes a solar pump to pipe the water to the place of use.

4. The information provided resolves the issue remark.

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 resolves 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.

A Post Decree Abstract of Water Right Claim is 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:

Santo Arroyo Trust
PO Box 54
Jordan, MT 59337

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

Water Right Number: 40D 101329-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SANTO ARROYO TRUST
PO BOX 54
JORDAN, MT 59337

Priority Date: DECEMBER 31, 1916

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 7.00 GPM

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: GROUNDWATER

Source Type: GROUNDWATER

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		NESE	30	16N	38E	GARFIELD

Period of Diversion: DECEMBER 31 TO JANUARY 1

Diversion Means: WELL

Period of Use: DECEMBER 31 TO JANUARY 1

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			NESE	30	16N	38E	GARFIELD