

# DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

WATER ADJUDICATION BUREAU • 910 Helena Avenue, Helena, MT 59601  
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STEVE BULLOCK, GOVERNOR

## STATE OF MONTANA

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HELENA, MONTANA 59620-1602

### MEMORANDUM

TO: CAROL BERTKE, JUDICIAL ASSISTANT  
FROM: JAKE GRUBER, WATER RESOURCE SPECIALIST  
DATE: 3/9/2020  
RE: BIG ELK CREEK (E064) PROJECT SETUP

#### DISCUSSION:

Big Elk Creek (E064) was set up from the confluence on the Musselshell River to Big Elk Creek's headwaters due to request from the court in the document listed below. The project consists of 75 water rights that include instream, stock, and irrigation. 152 points of diversion were included in the project (including 66 secondary PODs). Redundant PODs were removed from the project (such as consecutive livestock direct PODs from the same water right). Only water rights with a source name of 'Big Elk Creek' were used in the project. Diversions were labeled from downstream on up. Enforcement diversion numbers are reflected in the version with the most recent operating authority date aside from occasional change authorizations. The maps and tabulations will be sent over to you and the DNRC IT dept to update the website when the updates are done on the other active projects. If you would like digital copies, I can email them directly.

FILED

FEB 05 2020

Montana Water Court

No. DV-19-09  
FILED this 24 day of  
June 20 19  
J. M. Keller  
Clerk of District Court

MONTANA FOURTEENTH JUDICIAL DISTRICT COURT, WHEATLAND COUNTY

JOHN H. FREESER, *et al.*,

Plaintiffs,

v.

A.C. GRAVES, *et al.*,

Defendants.

Case No. DV-19-09

Hon. Randal I. Spaulding

PETITION FOR ENFORCEMENT OF  
DECREE AND APPOINTMENT OF  
WATER COMMISSIONER

Pursuant to Mont. Code Ann. §§ 3-7-212, 85-2-406(4), and 85-5-101(1), McFarland White Ranch, Inc. ("Petitioner"), the holder of at least 15 percent of the water rights (hereinafter referred to as "Petitioner") in Big Elk Creek, a tributary to the Musselshell River in the Musselshell River Basin 40A, petitions this Court for an order to enforce the provisions of the decree entered in Freeseer, et al. v. Graves, et al., Case No. 1703, Mont. 10th Jud. Dist. Ct., Meagher Co., ("Freeseer v. Graves"), or alternatively the provisions of the enforceable temporary preliminary decree, or preliminary decree, for Basin 40A as issued by the Montana Water Court for Big Elk Creek, as may be updated by any changes in appropriation rights issued under Title 85, Chapter 2, Montana Code Annotated, and to appoint a water commissioner as necessary to enforce said provisions on water rights from Big Elk Creek. Petitioner further seeks referral from this Court to the Montana Water Court to establish a tabulation of all existing rights on Big Elk Creek, within Basin 40A, and their relative priorities. Basin 40A is the subject of a

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temporary preliminary decree previously issued and adjudicated by the Water Court and is also subject to a Preliminary Decree issued by said Court.

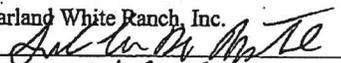
In support of this Petition, Petitioner states he is the owner of at least 15 percent of the Big Elk Creek water rights affected by Freaser v. Graves decree as well as owner of at least 15 percent of the water rights affected under the decrees issued by the Water Court. See, attached list from the Preliminary Decree for Basin 40A as issued by the Montana Water Court, listing all water rights from the preliminary decree on Big Elk Creek, Ex. A.

Petitioner respectfully requests this Court to appoint Craig Dalgarno, PO Box 388, Harlowton, Montana, 59036, to enforce the decree and act as water commissioner on Big Elk Creek. Petitioner respectfully requests the water commissioner be paid \$25 per hour plus the standard reimbursement rate for mileage and workers' compensation.

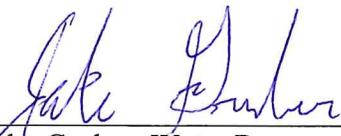
The following proposed documents are submitted with this Petition for the Court's convenience and consideration:

1. Order Granting Petition to Enforce Decree and Appointing Water Commissioner;
2. Request for Enforcement Tabulation;
4. Water Commissioner Bond.

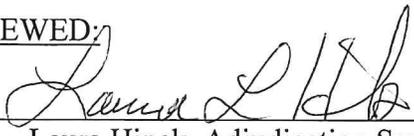
Gilbert McFarland White  
McFarland White Ranch, Inc.

By:   
Print name: GILBERT MCFARLAND WHITE  
Its: President

DATED 6-21-2019

By:  March 9, 2020  
Jake Gruber, Water Resource Specialist (406) 444-0508. JGruber2@mt.gov

REVIEWED:

By:  March 9, 2020  
Laura Hinck, Adjudication Supervisor (406) 444-0486. LHinck2@mt.gov

SERVICE LIST:

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