

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

\*\*\*\*\*

CLAIMANTS: Tara B. Eddy

**CASE 40D-0225-R-2023**

40D 169404-00

40E 169406-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Pursuant to Water Right Adjudication Rule 23, written objections to a Master's Report must be filed within **10 days** of the date the Report was filed. If this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this 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 169404-00 and 40E 169406-00 appeared in the Preliminary Decree for the Big Dry Creek (Basin 40D) with issue remarks resulting from pre-decree examination by the Department of Natural Resources and Conservation (DNRC). The claims did not receive objections, counterobjections, or notices of intent to appear. To address the issue remarks, the Water Court consolidated the claims into case 40D-0225-R-2023.

### **FINDINGS OF FACT**

1. Claim 40D 169404-00 received the following issue remark:

THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE SWSWNE SEC 22 TWP 19N RGE 34E GARFIELD COUNTY.

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

2. Claim 40E 169406-00 received an issue remark in the Preliminary Decree stating the claim was improperly designated to the 40D Basin when it should have been in the 40E Basin. This remark was removed in Water Court Case 40E-0416-R-2022.

3. Claimant was given a deadline of December 28, 2023, to file evidence to support the claimed place of use for claim 40D 169404-00. If nothing was filed, the Court stated it would change the abstract to match what the remark recommended.

4. No response was filed.

5. The new place of use for claim 40D 169404-00 is: **SWSWNE SEC 22 TWP 19N RGE 34E GARFIELD COUNTY.**

### **CONCLUSIONS OF LAW**

1. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248(2). The Court has authority to resolve issue remarks

when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

2. When resolving issue remarks, the Court must weigh the issue remark and the information resulting in the issue remark against the claimed water right. Section 85-2-247(2), MCA. The Water Court is permitted to use information submitted by DNRC, 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.

3. 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 status may be overcome by a preponderance of the evidence showing that an element of the claim is incorrect. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33.

4. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Court, the Court may upon motion or its own initiative, issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R.

5. Sanctions for a claimant’s failure to comply with an order issued by the Court in its review of issue remarks include: 1) amending elements of the claim to conform with information in the claim file, 2) amending element of the claim to conform with information obtained by the court, or 3) removing the issue remark. Section 85-2-248(9), MCA; Rule 22, W.R.Adj.R.

6. Tara Eddy failed to respond to the Water Court’s Order Setting Filing Deadline. Therefore, it is proper for the Water Court to resolve the issue remarks and amend claim 40D 169404-00 to conform with DNRC issue remarks.

7. Any remaining issue remarks on 40D 169404-00 and 40E 169406-00 have served their purpose of giving basin-wide notice of the potential issues. No objections or notices of intent to appear were filed. These claims were properly filed rights. A properly

filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. The issue remarks can be removed.

**RECOMMENDATIONS**

Based on the foregoing Findings of Fact and Conclusions of Law, the changes specified above should be adopted. Post-decree abstracts of the claims accompany this Order to confirm the changes have been made in the State's centralized water right record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS mail:**

Eddy, Tara B.  
PO Box 1454  
Livingston, MT 59047-1454  
406-222-6606 C

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

**Water Right Number:** 40D 169404-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** TARA B EDDY  
PO BOX 1454  
LIVINGSTON, MT 59047-1454

**Priority Date:** DECEMBER 31, 1936

**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:** LONE TREE CREEK, EAST FORK

**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		SWSWNE	22	19N	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>
	SWSWNE	22	19N	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			SWSWNE	22	19N	34E	GARFIELD

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**MISSOURI RIVER, BETWEEN MUSSELSHELL RIVER AND FORT PECK DAM**  
**BASIN 40E**

**Water Right Number:** 40E 169406-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** TARA B EDDY  
PO BOX 1454  
LIVINGSTON, MT 59047-1454

**Priority Date:** DECEMBER 31, 1936

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 10.00 GPM

**Volume:** 1.50 AC-FT

**Households:** 1

**Maximum Acres:** 1.00

**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		SWSNW	15	19N	34E	GARFIELD

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

**Diversion Means:** WELL

**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	1.00		SWSNW	15	19N	34E	GARFIELD

**Total:** 1.00

---

**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

169405-00      169406-00