

IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
BIG DRY CREEK - BASIN (40D)  
PRELIMINARY DECREE

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CLAIMANT: Elsie Wolff Family Trust

**CASE 40D-0211-R-2021**  
40D 34149-00  
40D 34150-00

**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, conclusion 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 34149-00 and 40D 34150-00 are claims owned by Elsie Wolff Family Trust. The claims appeared in the Preliminary Decree for Basin 40D with DNRC issue remarks and were consolidated into Water Court Case 40D-0211-R-2021.

### **FINDINGS OF FACT**

1. Claim 40D 34149-00 received the following DNRC issue remark:

THE LEGAL DESCRIPTION FOR POINTS OF DIVERSION NO. 3 AND 4 COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THE CLAIMED POINTS OF DIVERSION CANNOT BE CONFIRMED.

2. Claim 40D 34149-00 received the following DNRC issue remark:

IT APPEARS POINT OF DIVERSION NO. 2 MAY BE INCORRECT. THE EXISTENCE OF A DIKE CANNOT BE CONFIRMED FROM AVAILABLE DATA.

3. On November 9, 2021, DNRC Water Resource Specialist Pam Weinmeister filed a Memorandum including her review of the issue remarks. Ms. Weinmeister indicated that Claimants did not contact her however a previous claimant, John Beyrau had made contact with the office in May 2019.

4. Mr. Beyrau provided maps and photos showing the locations of the PODs of claim 40D 34149-00.

5. Ms. Weinmeister confirms POD ID 4 is visible in a 1978 photograph. POD 3 and 4 are both visible in a 2005 aerial photograph. Ms. Weinmeister recommends the removal of the issue remarks on claim 40D 34149-00.

6. Mr. Beyrau provided maps showing the location of POD #2 on claim 40D 34150-00.

7. Ms. Weinmeister cannot confirm the location of POD #2 in the aerial photographs she reviewed, however she states, "it appears a dike is located on the creek that is retaining a small amount of water."

8. The information provided resolves all issue remarks 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

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. Burkhardtmeier 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 remarks on this claim and support making the corrections 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 Abstracts of Water Right Claims are served with this Report to confirm the recommendations have been made in the state’s centralized record system.

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Julia J. Nordlund  
Senior Water Master

### Service via USPS Mail:

Elsie Wolff Family Trust  
515 Earling St  
Miles City, MT 59301

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

**Water Right Number:** 40D 34149-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** WOLFF, ELSIE FAMILY TRUST  
515 EARLING ST  
MILES CITY, MT 59301

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE OWNERS.

**Priority Date:** DECEMBER 31, 1955

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** WATER SPREADING

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

**Volume:** 29.03 AC-FT

**Climatic Area:** 1 - HIGH

**Maximum Acres:** 19.35

**\*Source Name:** UNNAMED TRIBUTARY OF HAY 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		SESENW	29	13N	46E	CUSTER

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

**Diversion Means:** DIKE

2		SWSENW	29	13N	46E	CUSTER
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DIKE

3		SESWNW	29	13N	46E	CUSTER
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DIKE

4		SWSWNW	29	13N	46E	CUSTER
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DIKE

**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>
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1	19.35
<b>Total:</b>	19.35

NW 29 13N 46E CUSTER

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

**Water Right Number:** 40D 34150-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** WOLFF, ELSIE FAMILY TRUST  
515 EARLING ST  
MILES CITY, MT 59301

**Priority Date:** DECEMBER 31, 1946

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** WATER SPREADING

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE  
CONSISTS OF DIRECT FLOW WATER SPREADING.

**Volume:** 23.00 AC-FT

**Climatic Area:** 1 - HIGH

**Maximum Acres:** 15.00

**Source Name:** UNNAMED TRIBUTARY OF HAY 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		NESENE	30	13N	46E	CUSTER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	DIKE					
2		NWSENE	30	13N	46E	CUSTER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	DIKE					
3		NESWNE	30	13N	46E	CUSTER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	DIKE					
4		SESWNE	30	13N	46E	CUSTER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	DIKE					
5		NWSWNE	30	13N	46E	CUSTER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	DIKE					

**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>
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1	15.00	S2NE	30	13N	46E	CUSTER
<b>Total:</b>	<hr/> 15.00					