

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

CLAIMANT: TBM Farms Partnership

CASE 40D-0298-R-2023

40D 164503-00

40D 164504-00

40D 164507-00

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 164503-00, 40D 164504-00, 40D 164507-00 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-0298-R-2023.

FINDINGS OF FACT

1. Claim 40D 164503-00 received the following issue remark:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION AND RESERVOIR RECORD. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE NENENE SEC 10 TWP 15N RGE 43E GARFIELD COUNTY.

2. Claim 40D 164504-00 received the following issue remark:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION AND RESERVOIR RECORD. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE SENESE SEC 10 TWP 15N RGE 43E GARFIELD COUNTY.

3. Claim 40D 164507-00 received the following issue remark:

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

4. Claimant was given a deadline of July 3, 2023. If nothing was filed, the Court stated it would change the abstracts to match what the remarks recommended.
5. No response was filed.

6. The new place of use for claim 40D 164503-00 is:

| <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 | | NENENE | SENESE | 10 | 15N | 43E | GARFIELD |

7. The new place of use for claim 40D 164504-00 is:

| <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 | | SENESE | NENESE | 10 | 15N | 43E | GARFIELD |

8. Upon inspection of the claim file for claim 40D 164507-00, the Statement of Claim states that the source is from an onstream reservoir of Uall Creek. Given the lack of moisture in Garfield County in recent years, it is possible that the reservoir would not show in any aerial photographs.
9. These claims also appeared with issue remarks providing notice of DNRC changes to the claims.

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. TBM Farms Partnership 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 the claims’ elements to conform with DNRC issue remarks.
7. The reservoir location issue remark does not overcome the prima facie status of claim 40D 164507-00 and can be removed.
8. The remarks 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:

TBM Farms Partnership
PO Box 88
Riddleton, TN 37151

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

Water Right Number: 40D 164503-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: TBM FARMS PARTNERSHIP
PO BOX 88
RIDDLETON, TN 37151

Priority Date: MAY 31, 1952

Type of Historical Right: USE

Purpose (use): STOCK

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

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 CROW ROCK 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 | | NENENE | 10 | 15N | 43E | 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> |
|-----------------|----------------|------------|------------|------------|---------------|
| | NENENE | 10 | 15N | 43E | GARFIELD |

Diversion to Reservoir: DIVERSION # 1

Period of Use: APRIL 1 TO DECEMBER 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 | | | NENENE | 10 | 15N | 43E | GARFIELD |

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

Water Right Number: 40D 164504-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: TBM FARMS PARTNERSHIP
PO BOX 88
RIDDLETON, TN 37151

Priority Date: MAY 31, 1952

Type of Historical Right: USE

Purpose (use): STOCK

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

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 CROW ROCK 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 | | SENESE | 10 | 15N | 43E | 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> |
|-----------------|----------------|------------|------------|------------|---------------|
| | SENESE | 10 | 15N | 43E | GARFIELD |

Diversion to Reservoir: DIVERSION # 1

Period of Use: APRIL 1 TO DECEMBER 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 | | | SENESE | 10 | 15N | 43E | GARFIELD |

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

Water Right Number: 40D 164507-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: TBM FARMS PARTNERSHIP
PO BOX 88
RIDDLETON, TN 37151

Priority Date: JUNE 30, 1955

Type of Historical Right: USE

Purpose (use): STOCK

***Flow Rate:** NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

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: UALL 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 | | SWSWSW | 22 | 15N | 43E | 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> |
|-----------------|----------------|------------|------------|------------|---------------|
| | SWSWSW | 22 | 15N | 43E | GARFIELD |

Diversion to Reservoir: DIVERSION # 1

Period of Use: JUNE 1 TO DECEMBER 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 | | | SWSWSW | 22 | 15N | 43E | GARFIELD |