

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
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)
PRELIMINARY DECREE

* * * * *

CLAIMANT: 5 Seas Ranch, LLC

CASE 40A-0197-R-2021

40A 202011-00
40A 202012-00
40A 202013-00
40A 211946-00
40A 30105876

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
FINDINGS OF FACT

1. The record owner of claims 40A 202011-00, 40A 202012-00, 40A 202013-00, 40A 211946-00, and 40A 30105876 is 5 Seas Ranch, LLC.
2. Claims 40A 202011-00, 40A 202012-00, 40A 202013-00, 40A 211946-00, and 40A 30105876 were decreed with various DNRC issue remarks.
3. No objections were filed to claims 40A 202011-00, 40A 202012-00, 40A 202013-00, 40A 211946-00, and 40A 30105876.
4. Claims 40A 202011-00, 40A 202012-00, and 40A 202013-00 were decreed with the following point of diversion listed on "Timber Creek":

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SE	36	11N	17E	WHEATLAND

The following DNRC issue remark was decreed on claims 40A 202011-00, 40A 202012-00, and 40A 202013-00:

BASED ON MATERIALS SUBMITTED TO THE LEWISTOWN REGIONAL OFFICE ON 08/16/2016, IT APPEARS THIS CLAIM'S DIVERSION COULD BE REFINED TO THE NWSESE SEC 36 TWP 11N RGE 17E WHEATLAND COUNTY. FURTHER, IT APPEARS THIS CLAIM'S DIVERSION MAY BE LOCATED ON AN UNNAMED TRIBUTARY OF TIMBER CREEK.

5. Claim 40A 211946-00 was claimed on October 29, 1987 and decreed with a June 30, 1973 priority date and it was decreed with the following point of diversion listed on "Timber Creek":

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESE	36	11N	17E	WHEATLAND

The following issue remarks were decreed on claim 40A 211946-00:

CLAIM WAS NOT INCLUDED IN THE BASIN 40A TEMPORARY PRELIMINARY DECREE ISSUED 05/07/1985.

CLAIM FILED LATE 10/29/1987 . IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85 -2-221 MCA.

THE POINT OF DIVERSION MAY BE INCORRECT/INCOMPLETE. THE POINT OF DIVERSION APPEARS TO BE IN THE NWSESE SEC 36 TWP 11N RGE 17E WHEATLAND COUNTY. HOWEVER, THERE APPEARS TO BE ANOTHER DIVERSION ON AN UNNAMED TRIBUTARY OF TIMBER CREEK WHICH IS LOCATED IN THE NWSESE SEC 36 TWP 11N RGE 17E WHEATLAND COUNTY.

6. Claim 40A 30105876 was filed on May 4, 2016 and the following remark was decreed on the claim:

7. An Order Setting Filing Deadline was issued indicating that based on the record, it appears the following changes should be made to the source and points of diversion for claims 40A 202011-00, 40A 202012-00, 40A 202013-00, and 40A 211946-00, resolving the issue remarks:

Source Name: ~~TIMBER CREEK~~ UNNAMED TRIBUTARY, TIMBER CREEK

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NW	SE	38	11N	17E	WHEATLAND

And based on the record, it appears the following change should be made to claim 40A 211946-00, addressing the issue remarks:

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
1		NW	SE	38	11N	17E	WHEATLAND

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

Please add second point of diversion:

	NW	SE	38	11N	17E	WHEATLAND
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Source: UNNAMED TRIBUTARY, TIMBER CREEK

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

A deadline was set for the Claimant to agree or disagree with the proposed changes. The Order indicated that if nothing was filed by the Claimant by the deadline, this Master would conclude the Claimant agreed with the proposed changes, and a Master's Report would be issued. The Order included the following language:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Pursuant to Rule 22, W.R.Adj.R., 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 Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

RECOMMENDATIONS

1. The claims in this Case should be modified as shown in Finding of Fact No. 7.

2. The issue remarks should be removed from claims 40A 202011-00, 40A 202012-00, 40A 202013-00, 40A 211946-00, and 40A 30105876.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended changes have been made in the DNRC's water rights database.

Anika M. Stern
Senior Water Master

Service via USPS Mail:

5 Seas Ranch, LLC
PO Box 285
Dittmer, MO 63023-0285

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A**

Water Right Number: 40A 202011-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: 5 SEAS RANCH LLC
PO BOX 285
DITTMER, MO 63023 0285

Priority Date: AUGUST 24, 1883

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 4.92 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 130.00

Source Name: UNNAMED TRIBUTARY OF TIMBER 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		NWSESE	36	11N	17E	WHEATLAND

Period of Diversion: APRIL 15 TO OCTOBER 19

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 19

***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	60.00		NE	1	10N	17E	WHEATLAND
2	4.00		E2SENW	1	10N	17E	WHEATLAND
3	16.00		NWSE	1	10N	17E	WHEATLAND
4	50.00		E2SW	1	10N	17E	WHEATLAND

Total: 130.00

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A**

Water Right Number: 40A 202012-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: 5 SEAS RANCH LLC
PO BOX 285
DITTMER, MO 63023 0285

Priority Date: MAY 25, 1949

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 4.92 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 130.00

Source Name: UNNAMED TRIBUTARY OF TIMBER 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		NWSESE	36	11N	17E	WHEATLAND

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 15

***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	60.00		NE	1	10N	17E	WHEATLAND
2	4.00		E2SE	1	10N	17E	WHEATLAND
3	16.00		NWSE	1	10N	17E	WHEATLAND
4	50.00		E2SW	1	10N	17E	WHEATLAND
Total:	<u>130.00</u>						

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A**

Water Right Number: 40A 202013-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: 5 SEAS RANCH LLC
PO BOX 285
DITTMER, MO 63023 0285

Priority Date: JULY 10, 1884

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 4.92 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 130.00

Source Name: UNNAMED TRIBUTARY OF TIMBER 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		NWSESE	36	11N	17E	WHEATLAND

Period of Diversion: APRIL 15 TO OCTOBER 19

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO OCTOBER 19

***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	60.00		NE	1	10N	17E	WHEATLAND
2	4.00		E2SENW	1	10N	17E	WHEATLAND
3	16.00		NWSE	1	10N	17E	WHEATLAND
4	50.00		E2SW	1	10N	17E	WHEATLAND
Total:	<u>130.00</u>						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

202011-00 202012-00 202013-00

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A**

Water Right Number: 40A 211946-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: 5 SEAS RANCH LLC
PO BOX 285
DITTMER, MO 63023 0285

Priority Date: MAY 1, 1895

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 10/29/1987 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 289.00 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 17.00

Source Name: UNNAMED TRIBUTARY OF TIMBER CREEK

Source Type: SURFACE WATER

Source Name: TIMBER 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		NWNESE	36	11N	17E	WHEATLAND

Source Name: TIMBER CREEK

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

2		NWSESE	36	11N	17E	WHEATLAND
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Source Name: UNNAMED TRIBUTARY OF TIMBER CREEK

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO OCTOBER 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	17.00		NWNE	1	10N	17E	WHEATLAND
Total:	17.00						

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A**

Water Right Number: 40A 30105876 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: 5 SEAS RANCH LLC
PO BOX 285
DITTMER, MO 63023 0285

Priority Date: AUGUST 24, 1883

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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 STOCK WATERING 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: TIMBER 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		NWNE	1	10N	17E	WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		NWNESW	1	10N	17E	WHEATLAND
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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			NWNE	1	10N	17E	WHEATLAND
2			NWNESW	1	10N	17E	WHEATLAND