

40A-0233-R-2021
December 3, 2021

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP (BASIN 40A)
PRELIMINARY DECREE

CLAIMANT: Marlene G. Uglum

CASE 40A-0233-R-2021

40A 201973-00
40A 201974-00
40A 201996-00
40A 202000-00

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. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. 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

The above-captioned claims appeared in the Preliminary Decree for the Musselshell River above Roundup (Basin 40A) issued on June 7, 2017. The claims are owned by Marlene Uglum. The claims did not receive objections, counterobjections, or notices of intent to appear but did receive issue remarks during the DNRC's claims reexamination.

FINDINGS OF FACT

40A 201973-00

1. Stock Claim 40A 201973-00 was decreed for stock drinking directly from a spring in the NESENE of Section 7, T10N, R16E, Wheatland County.

2. The claim received the following issue remark:

IF NO FURTHER EVIDENCE OF A PRIORITY DATE IS PRESENTED TO THE COURT, THIS WATER RIGHT WILL BE DECREED WITH A PRIORITY DATE OF JUNE 30, 1973.

3. On April 23, 2021, the Court ordered Claimant, if she did not agree with the June 30, 1973, priority date, to provide evidence of the correct priority date. The Order stated that if nothing was filed, the priority date would remain as June 30, 1973. Nothing was filed by the deadline.

40A 201974-00

4. Stock Claim 40A 201974-00 identifies an onstream reservoir in the NWSWNE of Section 7, T10N, R16E, Wheatland County. The claim received the following issue remark:

IF NO FURTHER EVIDENCE OF A PRIORITY DATE IS PRESENTED TO THE COURT, THIS WATER RIGHT WILL BE DECREED WITH A PRIORITY DATE OF JUNE 30, 1973.

5. On April 23, 2021, the Court ordered Claimant, if she did not agree with the June 30, 1973, priority date, to provide evidence of the correct priority date. The Order stated that if nothing was filed, the priority date would remain June 30, 1973. Nothing was filed by the deadline.

40A 202000-00

6. Claim 40A 202000-00 is a flood irrigation claim for 28.00 acres in the NE of Section 7, T10N, R16E, Wheatland County.

7. The claim received an issue remark stating that the decreed volume of 95.90 acre-feet per year (AFY) exceeds the capacity of the reservoir.

8. The capacity of the reservoir was estimated by the DNRC during its preparation of the Basin 40A Preliminary Decree. The DNRC then added the volume issue remark based on its estimated capacity.

9. On April 23, 2021, the Court ordered Claimant to file information or evidence if the claimed reservoir had a storage component. The Order stated that if nothing was filed by the deadline, the volume would remain as it appeared in the Basin 40A Preliminary Decree. Nothing was filed by the deadline.

10. Based on the information in the claim file, it appears claim 40A 202000-00 is a direct flow irrigation claim. This explains why the decreed volume exceeds the capacity of the reservoir. The following information remark should be added to the volume of the claim:

PRIMARILY DIRECT FLOW SYSTEM

Notice-Type Issue Remarks

11. Claim 40A 202000-00 received the following notice-type issue remark:

PRIORITY DATE WAS CHANGED FROM JUNE 30, 1973 TO DECEMBER 31, 1965, TO CONFORM TO THE EVIDENCE. BECAUSE PRIORITY DATE WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

12. No objections were filed to the priority date of claim 40A 202000-00. Therefore, the remark served its notice purpose, and the remark should be removed from the claim.

13. The claims received the following issue remarks regarding modifications made by the DNRC prior to the issuance of the Basin 40A Preliminary Decree:

40A 201974-00

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

MEANS OF DIVERSION AND RESERVOIR RECORD WERE 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.

40A 201996-00

MEANS 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.

40A 202000-00

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

MEANS OF DIVERSION AND RESERVOIR RECORD WERE 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.

14. Claims 40A 201974-00, 40A 201996-00, and 40A 202000-00 did not receive objections.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is *prima facie* proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. *Prima facie* proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If *prima facie* status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the *prima facie* status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

CONCLUSIONS OF LAW

40A 201973-00

1. The priority date issue remark served its notice purpose. Claimant did not provide additional evidence. The priority date should remain as it appeared in the Basin 40A Preliminary Decree, and the remark should be removed from the claim.

40A 201974-00

2. The priority date issue remark served its notice purpose. No additional evidence was provided by Claimant and the priority date should remain as it appeared in the Basin 40A Preliminary Decree. The remark should be removed from the claim.

40A 202000-00

3. The volume issue remark does not overcome the *prima facie* status of claim 40A 202000-00. There is no evidence in the claim file showing the claimed reservoir historically had a storage component and the issue remark is based on a DNRC estimate of the reservoir capacity. The evidence shows claim 40A 202000-00 is a direct flow irrigation claim. Therefore, the information remark described in Finding of Fact No. 10 should be added to the claim and the volume should remain as it appeared in the Basin 40A Preliminary Decree. The volume should remain as it appeared in the Basin 40A Preliminary Decree. The volume issue remark is resolved and should be removed from claim 40A 202000-00.

Notice-Type Issue Remarks

4. The notice-type issue remarks on claims 40A 201974-00, 40A 201996-00, and 40A 202000-00 served their notice purposes. The claims did not receive objections

and the remarks do not raise unresolved issues. The remarks should be removed from each claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of each water right claim reflecting the recommended changes is attached to this Report.

Melissa Lockman
Senior Water Master

Service via USPS Mail

Marlene G. Uglum
338 Maple St
Carrollton, GA 30117

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

Water Right Number: **40A 201973-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MARLENE G UGLUM
338 MAPLE ST
CARROLLTON, GA 30117

Priority Date: JUNE 30, 1973

Type of Historical Right: USE

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: SPRING, UNNAMED TRIBUTARY OF ROBERTS CREEK, EAST FORK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESENE	7	10N	16E	WHEATLAND

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>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NESENE	7	10N	16E	WHEATLAND

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

Water Right Number: **40A 201974-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MARLENE G UGLUM
338 MAPLE ST
CARROLLTON, GA 30117

Priority Date: JUNE 30, 1973

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 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: UNNAMED TRIBUTARY OF ROBERTS CREEK, EAST FORK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWNE	7	10N	16E	WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DAM
Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSWNE	7	10N	16E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET
Depth: 8.00 FEET
Surface Area: 0.60 ACRES
Capacity: 1.92 ACRE-FEET

Period of Use: JANUARY 1 TO DECEMBER 31
Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWSWNE	7	10N	16E	WHEATLAND

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

Water Right Number: **40A 201996-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MARLENE G UGLUM
338 MAPLE ST
CARROLLTON, GA 30117

Priority Date: JUNE 30, 1973

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 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: UNNAMED TRIBUTARY OF ROBERTS CREEK, EAST FORK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNESW	19	10N	16E	WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNESW	19	10N	16E	WHEATLAND

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>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNESW	19	10N	16E	WHEATLAND

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

Water Right Number: 40A 202000-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE
Owners: MARLENE G UGLUM
338 MAPLE ST
CARROLLTON, GA 30117
***Priority Date:** DECEMBER 31, 1965
Type of Historical Right: USE
Purpose (Use): IRRIGATION
Irrigation Type: FLOOD
***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 95.90 AC-FT
PRIMARILY DIRECT FLOW SYSTEM.

Climatic Area: 4 - MODERATELY LOW
***Maximum Acres:** 28.00
Source Name: UNNAMED TRIBUTARY OF ROBERTS 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		NWSWNE	7	10N	16E	WHEATLAND

Period of Diversion: APRIL 15 TO OCTOBER 15
Diversion Means: DAM
MEANS OF DIVERSION INCLUDES A DIKE.
Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSWNE	7	10N	16E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET
Depth: 8.00 FEET
Surface Area: 0.60 ACRES
Capacity: 1.92 ACRE-FEET

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>
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1	28.00
Total:	<hr/> 28.00

NE 7 10N 16E WHEATLAND