

Montana Water Court

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

CLAIMANTS: Larry D. Berg; Roxanne Berg

CASE 40A-0246-R-2021

40A 202004-00
40A 202005-00
40A 202006-00
40A 202007-00
40A 205438-00
40A 205961-00
40A 205962-00
40A 205967-00

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

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 Larry and Roxanne Berg. The claims did not receive objections, counterobjections, or notices of intent to appear but did receive issue remarks during the DNRC's claims reexamination. Issue remarks are notations identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

FINDINGS OF FACT

40A 202005-00

1. Claim 40A 202005-00 is a stock claim for an onstream reservoir in the SWSESE of Section 24, T9N, R17E, Wheatland County. The claim received the following issue remark:

THE POINT OF DIVERSION, RESERVOIR RECORD, AND PLACE OF USE ARE IN QUESTION. THERE DOES NOT APPEAR TO BE A RESERVOIR AT THE CLAIMED LOCATION.

2. There are no notes in the claim file detailing what evidence the DNRC reviewed when determining there was no reservoir at the claimed location. This information is particularly useful where, as here, the claimed reservoir is a small stockwater reservoir that may not be visible on all aerial photographs.

3. On October 8, 2021, Claimant Larry Berg filed a contemporary map showing the reservoir in the claimed location.

40A 205438-00

4. Claim 40A 205438-00 is a livestock direct form source right. The claim appeared in the Basin 40A Preliminary Decree with its point of diversion and place of use in the NWSESE of Section 9, T7N, R17E, Wheatland County. The claim received the following issue remark:

ON 06/20/2002 DNRC FILED A MEMO STATING THE POINT OF DIVERSION/PLACE OF USE ARE INCORRECT. THE POINT OF DIVERSION/PLACE OF USE APPEARS TO BE IN THE NWSESE SEC 9 TWP 9N RGE 17E WHEATLAND CO.

5. The 2002 DNRC Memo states the following:

Claim 40A W205438 had claimed both a point of diversion and place of use in Township 9N. The claimants map seems to confirm this. However, when decreed the township was shown as 7N. The Township should be changed to 9N for the point of diversion and the place of use.

6. Based on this information, the township for the point of diversion and place of use should be corrected from T7N to T9N.

40A 205961-00

7. Claim 40A 205961-00 is a flood irrigation claim that diverts water from Spring Creek via a headgate in the SENENE of Section 5, T9N, R18E, Wheatland County. The claim received the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

8. The claims examiner did not state what information they relied on when placing this issue remark on the claim, but the notes do question whether the headgate is located further downstream on Spring Creek.

9. On October 8, 2021, Claimant Larry Berg file a picture of the headgate for claim 40A 205961-00. Although the photograph is undated and does not provide a legal land description, it is apparent from the photograph why it would be difficult to locate on an aerial photograph.

Notice-Type Issue Remarks

10. The claims in this matter received the following notice-type issue remarks:

40A 202004-00

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 202005-00

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 202006-00

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 202007-00

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 205962-00

POINT OF DIVERSION AND DITCH NAME 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 205967-00

SOURCE NAME 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.

11. The notice-type issue remarks identify elements modified as a result of DNRC review pursuant to Montana Water Court reexamination orders. The remarks indicate that if no objections are filed, the elements of the claim will remain as they appear on the abstract and the remarks will be removed. None of the claims received 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 202005-00

1. The reservoir issue remark does not overcome the *prima facie* status of claim 40A 202005-00. There is no evidence supporting the issue remark. Therefore, the remark should be removed from the claim and the point of diversion, reservoir record, and place of use should remain as they appeared in the Basin 40A Preliminary Decree.

40A 205438-00

2. The point of diversion/place of use issue remark overcomes the *prima facie* status of the claim. The evidence in the claim file shows the township of the point of diversion and place of use should be corrected to T9N. This correction resolves the issue remark, and the remark should be removed from the claim.

40A 205961-00

3. The point of diversion issue remark does not overcome the *prima facie* status of the claim. There is no evidence supporting the remark and the evidence provided by Claimant Larry Berg suggests why the claims examiner may have been unable to locate the headgate using aerial photographs. The remark should be removed from the claim and the point of diversion should remain as it appeared in the Basin 40A Preliminary Decree.

Notice-Type Issue Remarks

4. The notice-type remarks do not raise unresolved issues that need to be addressed. No proceedings are required to resolve the remarks; the remarks will be removed from the abstracts.

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

Larry D Berg
Roxanne Berg
PO Box 318
Judith Gap, MT 59453-0318

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

Water Right Number: **40A 202004-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
LARRY D BERG
PO BOX 318
JUDITH GAP, MT 59453 0318

ROXANNE BERG
PO BOX 318
JUDITH GAP, MT 59453 0318

Priority Date: JULY 31, 1946

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

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	24	9N	17E	WHEATLAND

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	24	9N	17E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 2.00 ACRES

Capacity: 6.40 ACRE-FEET

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

NENENE 24 9N 17E WHEATLAND

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

Water Right Number: **40A 202005-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
LARRY D BERG
PO BOX 318
JUDITH GAP, MT 59453 0318

ROXANNE BERG
PO BOX 318
JUDITH GAP, MT 59453 0318

Priority Date: JULY 31, 1946

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

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWSESE	24	9N	17E	WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

Govt Lot	Qtr Sec	Sec	Twp	Rge	County
	SWSESE	24	9N	17E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SWSESE	24	9N	17E	WHEATLAND

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

Water Right Number: **40A 202006-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
LARRY D BERG
PO BOX 318
JUDITH GAP, MT 59453 0318

ROXANNE BERG
PO BOX 318
JUDITH GAP, MT 59453 0318

Priority Date: JULY 31, 1946

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

Source Type: SURFACE WATER

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		NESESE	24	9N	17E	WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESESE	24	9N	17E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 1.60 ACRES

Capacity: 5.12 ACRE-FEET

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
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1

NESESE 24 9N 17E WHEATLAND

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

Water Right Number: **40A 202007-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
LARRY D BERG
PO BOX 318
JUDITH GAP, MT 59453 0318

ROXANNE BERG
PO BOX 318
JUDITH GAP, MT 59453 0318

Priority Date: JULY 31, 1946

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

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr	Sec	Twp	Rge	County
1	SWSWSE		24	9N	17E	WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

Govt Lot	Qtr	Sec	Twp	Rge	County
SWSWSE		24	9N	17E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

ID	Acres	Govt Lot	Qtr	Sec	Twp	Rge	County
1		SWSWSE		24	9N	17E	WHEATLAND

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

Water Right Number: **40A 205438-00** STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:
LARRY D BERG
PO BOX 318
JUDITH GAP, MT 59453 0318

ROXANNE BERG
PO BOX 318
JUDITH GAP, MT 59453 0318

Priority Date: DECEMBER 31, 1910

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 TIMBER CREEK

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		NWSESE	9	9N	17E	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>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWSESE	9	9N	17E	WHEATLAND

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

Water Right Number: **40A 205961-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
LARRY D BERG
PO BOX 318
JUDITH GAP, MT 59453 0318

ROXANNE BERG
PO BOX 318
JUDITH GAP, MT 59453 0318

Priority Date: JUNE 17, 1940

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.50 CFS

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

Climatic Area: 3 - MODERATE

***Maximum Acres:** 114.00

Source Name: SPRING CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SENENE	5	9N	18E	WHEATLAND

Period of Diversion: MARCH 1 TO NOVEMBER 30

Diversion Means: HEADGATE

Period of Use: MARCH 1 TO NOVEMBER 30

***Place of Use:**

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	19.00		E2SE	5	9N	18E	WHEATLAND
2	55.00		N2NE	8	9N	18E	WHEATLAND
3	40.00		SENE	8	9N	18E	WHEATLAND
Total:	114.00						

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.

205961-00

205962-00

205967-00

205968-00

205969-00

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

Water Right Number: **40A 205962-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
LARRY D BERG
PO BOX 318
JUDITH GAP, MT 59453 0318

ROXANNE BERG
PO BOX 318
JUDITH GAP, MT 59453 0318

Priority Date: AUGUST 1, 1905

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.00 CFS

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

Climatic Area: 3 - MODERATE

***Maximum Acres:** 185.00

Source Name: CARELESS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NESE	29	10N	18E	WHEATLAND

Period of Diversion: MARCH 1 TO NOVEMBER 30

Diversion Means: HEADGATE

Ditch Name: MCKAY FLOOD DITCHES

Period of Use: MARCH 1 TO NOVEMBER 30

***Place of Use:**

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	22.00		E2NE	5	9N	18E	WHEATLAND
2	49.00		SE	5	9N	18E	WHEATLAND
3	55.00		N2NE	8	9N	18E	WHEATLAND
4	22.00		NWNW	9	9N	18E	WHEATLAND
5	37.00		E2SE	32	10N	18E	WHEATLAND
Total:	185.00						

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.

205961-00

205962-00

205967-00

205968-00

205969-00

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

Water Right Number: **40A 205967-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:
LARRY D BERG
PO BOX 318
JUDITH GAP, MT 59453 0318

ROXANNE BERG
PO BOX 318
JUDITH GAP, MT 59453 0318

Priority Date: MAY 20, 1885

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.50 CFS

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

Climatic Area: 3 - MODERATE

***Maximum Acres:** 122.00

Source Name: SPRING CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS MILL COULEE CREEK

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		SWSESE	5	9N	18E	WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: HEADGATE

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	40.00		SENE	8	9N	18E	WHEATLAND
2	22.00		NWNW	9	9N	18E	WHEATLAND
3	40.00		SWNW	9	9N	18E	WHEATLAND
4	20.00		NWSW	9	9N	18E	WHEATLAND
Total:	122.00						

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.

205961-00

205962-00

205967-00

205968-00

205969-00