

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

\* \* \* \* \*

CLAIMANTS: Checkerboard Cattle Company LLC; Jeffrey M.  
and Shauna R. Eagleton Revocable Trust; RMJ  
Indreland Trust

**CASE 40A-0402-R-2020**

40A 20659-00

40A 43384-00

OBJECTOR: Richard L. Indreland

**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**

Water Right Claims 40A 20659-00 and 40A 43384-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). The claims received an issue remark. Issue remarks result from Department of Natural Resources and

Conservation (“DNRC”) claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. Claim 40A 20659-00 received an objection from RMJ Indreland Trust.

### **Findings of Fact**

1. Claim 40A 20659-00 appeared with three issue remarks. One issue remark states the DNRC received an amendment to the flow rate. The second issue remark states the DNRC received an amendment agreement. The third issue remark indicates the type of right, priority date, and flow rate may be questionable because Claim 40A 20659-00 and 40A 43384-00 each claim the same water right but the combined claimed flow rate exceeds that stated in the notice of appropriation.

2. Claim 40A 43384-00 appeared with two issue remarks. One issue remark states the DNRC received an amendment to the flow rate. The other issue remark indicates the type of right, priority date, and flow rate may be questionable because Claim 40A 20659-00 and 40A 43384-00 each claim the same water right but the combined claimed flow rate exceeds that stated in the notice of appropriation.

### **Objection to Claim 40A 20659-00**

3. Richard L. Indreland is co-trustee of RMJ Indreland Trust. Mr. Indreland objected to the point of diversion and means of diversion of Claim 40A 20659-00 on behalf of RMJ Indreland Trust.

4. Mr. Indreland included an affidavit which includes an explanation of the objection. In this affidavit, dated September 22, 2017, Mr. Indreland states: “I can honestly state that for the last 70 years (personally witnessing) that only one ditch has served Claim 40A 20659-00 and that is the Mill Ditch.”

3. Mr. Indreland requests the Court remove the information remark from Claim 40A 20659-00 stating:

“INDRELANDS AND HOLLIDAY LAND AND LIVESTOCK COMPANY  
ARE SERVED BY SEPARATE DITCHES IN CLOSE PROXIMITY.”

4. Through the September 4, 2020 consolidation order, the Court requested input regarding from the Co-Owners of Claim 40A 20659-00 regarding this objection. The states in its order: “The remaining claimants may review this requested change and file comments with the Court if they disagree with the request to remove the above-described information remark.”

5. Co-Owners Checkerboard Cattle Company LLC and the Jeffrey M. & Shauna Eagleton Revocable Trust did not file responses.

6. The above-described information remark should be removed.

*Over-appropriation Issue Remark*

7. Claim 40A 20659-00 and 40A 43384-00 both claim the same Notice of Appropriation. This Notice of Appropriation is for 600 miner’s inches of water from the North Fork of the Musselshell River with a priority date of May 26, 1883.

8. The cumulative claimed flow rate of the above-captioned claims is 633.12 miner’s inches.

9. The amendment issue remarks on Claim 40A 20659-00 reference an amendment submitted on April 16, 2016 by RMJ Indreland Trust and an amendment agreement submitted by Checkerboard Cattle Company, LLC on May 19, 2016. The amendment states the claimed flow rate should be changed to 16 miner’s inches (179.52 gallons per minute). The amendment agreement indicates Checkerboard Cattle Company LLC’s assent to the amendment.

10. The flow rate of Claim 40A 20659-00 should be 179.52 gallons per minute.

11. The amendment issue remark on Claim 40A 43384-00 references an amendment submitted by Checkerboard Cattle Co., LLC on April 8, 2016. The amendment states the claimed flow rate should be changed to 584 miner’s inches (14.60 cubic feet per second).

12. The flow rate of Claim 40A 43384-00 should be 14.60 cubic feet per second.

13. The modifications of the flow rates of both above-captioned claims results in a reduced cumulative flow rate consistent with the mutually claimed Notice of appropriation.

14. The issue remarks should be removed from both claims.

### **APPLICABLE LAW**

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. 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, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

### **CONCLUSIONS OF LAW**

1. The changes described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of the claim by a preponderance of the evidence.

2. The evidence in the record and the proposed changes provide the Court with a sufficient basis to resolve and remove each issue remark from the above-captioned claim.

### **RECOMMENDATIONS**

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. Post-decree Abstracts of Water Right Claims are served with this Report to confirm the recommended changes have been made in the state’s centralized record system.

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Colton J. Lauer  
Water Master

**Service via USPS Mail:**

Checkerboard Cattle Company LLC  
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Orlando, FL 32804  
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(407) 509-3950 C  
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[bcorino@masseyservices.com](mailto:bcorino@masseyservices.com)  
[hlm@checkerboardcc.com](mailto:hlm@checkerboardcc.com)

Jeffrey M. and Shauna R. Eagleton Revocable Trust  
Jeffrey M. & Shauna R. Eagleton, Trustees  
45 John Sears Rd  
Martinsdale, MT 59053

RMJ Indreland Trust  
% Trustees  
Richard L. Indreland  
8 Spring Creek Rd  
Martinsdale, MT 59053  
(406) 572-3365

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

**Water Right Number:** 40A 20659-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** CHECKERBOARD CATTLE COMPANY LLC  
315 GROVELAND ST  
ORLANDO, FL 32804 4052

EAGLETON, JEFFREY M & SHAUNA R REVOCABLE TRUST  
EAGLETON JEFFREY M & SHAUNA R TRUSTEES  
45 JOHN SEARS RD  
MARTINSDALE, MT 59053 8702

INDRELAND, RMJ TRUST  
% TRUSTEES  
8 SPRING CREEK RD  
MARTINSDALE, MT 59053

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

**Priority Date:** MAY 26, 1883

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 179.52 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:** 22.00

**Source Name:** MUSSELSHELL RIVER, NORTH 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		SESWW	10	9N	10E	MEAGHER

**Period of Diversion:** MAY 1 TO SEPTEMBER 30

**Diversion Means:** HEADGATE

**Ditch Name:** MILL DITCH

**Period of Use:** MAY 1 TO SEPTEMBER 30

**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	3.00		SENW	14	9N	10E	MEAGHER
2	7.00		SWNW	14	9N	10E	MEAGHER

3	7.00	SENE	15	9N	10E	MEAGHER
4	5.00	SWNE	15	9N	10E	MEAGHER
<b>Total:</b>	22.00					

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**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.

20659-00      20660-00      20661-00      20663-00

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

**Water Right Number:** 40A 43384-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** CHECKERBOARD CATTLE COMPANY LLC  
315 GROVELAND ST  
ORLANDO, FL 32804 4052

**Priority Date:** MAY 26, 1883

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 14.60 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:** 937.50

**\*Source Name:** MUSSELSHELL RIVER, NORTH 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		SESWW	10	9N	10E	MEAGHER

**Period of Diversion:** APRIL 20 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** MILL DITCH

**Period of Use:** APRIL 20 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	41.00		E2SE	13	9N	10E	MEAGHER
2	45.00		SW	13	9N	10E	MEAGHER
3	30.00		E2E2SE	14	9N	10E	MEAGHER
4	8.00		NWSESE	14	9N	10E	MEAGHER
5	40.00		E2NE	24	9N	10E	MEAGHER
6	25.00		W2NE	24	9N	10E	MEAGHER
7	43.00		NW	24	9N	10E	MEAGHER
8	2.00		S2S2NE	17	9N	11E	MEAGHER
9	3.00		SESESE	17	9N	11E	MEAGHER
10	48.00		W2SE	17	9N	11E	MEAGHER
11	28.00		S2SW	17	9N	11E	MEAGHER



12	45.00	W2SE	18	9N	11E	MEAGHER
13	57.50	SW	18	9N	11E	MEAGHER
14	70.00	E2E2	19	9N	11E	MEAGHER
15	40.00	NWNE	19	9N	11E	MEAGHER
16	71.00	NW	19	9N	11E	MEAGHER
17	88.00	NE	20	9N	11E	MEAGHER
18	140.00	NW	20	9N	11E	MEAGHER
19	4.00	NENWSE	20	9N	11E	MEAGHER
20	75.00	N2SW	20	9N	11E	MEAGHER
21	16.00	NWNW	21	9N	11E	MEAGHER
22	18.00	S2SE	21	9N	11E	MEAGHER
<b>Total:</b>	937.50					

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**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.

27126-00	27127-00	29388-00	29389-00	29392-00	33298-00
43382-00	43384-00	45690-00	186633-00	188784-00	188794-00
189170-00	189172-00	189173-00			