

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

\* \* \* \* \*

CLAIMANT: United States of America (Bureau of Land  
Management)

OBJECTOR: United States of America (Bureau of Land  
Management)

**CASE 40C-0037-R-2021**

40C 62635-00

40C 62636-00

40C 62785-00

40C 62787-00

40C 63127-00

40C 169206-00

**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, Below Roundup (Basin 40C) issued on June 7, 2017. The claims are owned by the United States Department of Interior, Bureau of Land Management (BLM). Claims 40C 62635-00 and 40C 62636-00 received self-objections from BLM. All the claims, except claim 40C 169206-00, received issue remarks during the DNRC's claims examination.

### FINDINGS OF FACT

#### **40C 62635-00 and 40C 62636-00**

1. Claims 40C 62635-00 and 40C 62636-00 are multiple uses of the same onstream reservoir on Whisker Coulee. The claims appeared in the Basin 40C Preliminary Decree with the following point of diversion and place of use:

##### *Point of Diversion/Reservoir Record (40C 62635-00)*

<u>ID</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWNW		16	20N	26E Fergus

##### *Point of Diversion/Reservoir Record (40C 62636-00)*

<u>ID</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWNE		17	20N	26E Fergus

##### *Place of Use (40C 62635-00 and 40C 62636-00)*

<u>ID</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWNE		17	20N	26E Fergus

2. Claim 40C 62635-00 received the following issue remark:

THE PLACE OF USE APPEARS TO BE INCORRECT. THE PLACE OF USE APPEARS TO BE IN THE SWSWNW SEC 16 TWP 20N RGE 26E FERGUS COUNTY.

3. BLM's objection to both claims proposes adding an information remark to the point of diversion/reservoir record to clarify that the dam extends into the NWNWSW of Section 16, T20N, R26E, which is on privately-owned land. BLM's objection also proposes correcting the place of use to include the entire surface area of the reservoir located on BLM land as follows:

##### *Place of Use*

<u>ID</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWNE		17	20N	26E Fergus
<b>2</b>		<b>NENESE</b>		<b>17</b>	<b>20N</b>	<b>26E Fergus</b>

4. BLM's objection also states that the volume for each claim should reflect at least a one-time fill of the capacity of the claimed reservoir but did not provide a quantified volume for a one-time fill of the claimed reservoir or reservoir dimensions. Claim 40C 62635-00 claimed a volume of 0.40 acre-feet (AF) and claim 40C 62636-00 claimed a volume of 34.60 AF. Based on this information, a one-time fill of the claimed reservoir is 35.00 AF.

5. On August 23, 2021, BLM filed additional information regarding claims 40C 62635-00 and 40C 62636-00. The filing provided the following information:

THE DAM EXTENDS INTO THE NENESW SEC 16 TWP 20N RGE 26E  
FERGUS COUNTY.

Dam Height 29 feet  
Maximum Depth 23 feet  
Surface Area 29 acres  
Capacity 266.80

BLM also determined that the claimed Place of Use does not reflect the historical  
Place of Use and should be corrected to the NE, NENESE Sec 16 Twp 20N Rge 26E  
Fergus County. This description encompasses the surface area of the reservoir located on  
BLM lands.

6. Because this information contradicted the modifications requested in BLM's objections to the claims, the Court set an additional filing deadline. In response, BLM provided a map of the claimed reservoir. Based on the map, the legal land descriptions provided in BLM's objections reflect the historically accurate location of the claimed reservoir.

7. Based on the map provided by BLM, the following information remark should be added to the claims:

THE DAM EXTENDS INTO THE NWNWSW SEC 16 TWP 20N RGE 26E  
FERGUS COUNTY, WHICH IS ON PRIVATELY-OWNED LAND.

#### **40C 62785-00**

8. Claim 40C 62785-00 is a wildlife claim for Brown Well in Section 28, T9N, R26E, Musselshell County. The claim received the following issue remarks regarding the point of diversion and place of use:

THE PLACE OF USE APPEARS TO BE INCORRECT. THE CORRECT PLACE OF USE LEGAL LAND  
DESCRIPTION APPEARS TO BE THE SWSWNE SEC 28 TWP 9N RGE 26E MUSSELHELL COUNTY.  
THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO  
BE IN THE SWSWNE SEC 28 TWP 9N RGE 26E MUSSELHELL COUNTY.

9. In their August 23, 2021, filing, BLM agreed with DNRC's proposed refinements to the point of diversion and place of use.

10. Claim 40C 62785-00 also received the following issue remark:

THE WATER COURT CANNOT DECREE THIS RIGHT WITHOUT FURTHER PRESENTATION OF EVIDENCE CONCERNING PRIORITY DATE OF THIS WATER RIGHT. TO ASSURE THE ORDERLY ADJUDICATION OF WATER RIGHTS, THE COURT WILL SET A HEARING TO DETERMINE THIS ISSUE IF NO OBJECTIONS ARE MADE.

11. The claim was decreed with a priority date of November 17, 1981.

12. The Statement of Claim listed the priority date as December 28, 1964. The priority date issue remark was placed on the claim during claims verification. Although the priority date was modified during the Basin 40C Temporary Preliminary Decree, the issue remark was not removed from the claim. This appears to be a clerical error.

#### **40C 62787-00**

13. Claim 40C 62787-00 is a wildlife claim for Lind Well. The claim appeared in the Basin 40C Preliminary Decree with a volume of 90,001.52 AF. The claim received the following issue remarks:

THE WATER COURT CANNOT DECREE THIS RIGHT WITHOUT FURTHER PRESENTATION OF EVIDENCE CONCERNING VOLUME OF THIS WATER RIGHT. TO ASSURE THE ORDERLY ADJUDICATION OF WATER RIGHTS, THE COURT WILL SET A HEARING TO DETERMINE THIS ISSUE IF NO OBJECTIONS ARE MADE.

THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 16.11 ACRE-FEET PER YEAR.

14. In their August 23, 2021, filing, BLM agreed with DNRC's maximum feasible volume of 16.11 AF.

#### **40C 63127-00**

15. Claim 40C 63127-00 is a wildlife claim from a developed spring in the NESW of Section 30, T17N, R29E, Petroleum County. The claim received the following issue remark:

THIS CLAIM IS BASED ON PUBLIC WATER RESERVE NO. 107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A FEDERAL RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION.

16. BLM's August 23, 2021, filing requests that the priority date and type of historical right be modified as follows:

Priority Date:	<del>April 17, 1926</del>	<u>July 11, 1935</u>
Type of Historical Right:	<del>Reserved</del>	<u>Use</u>

17. According to BLM, claim 40C 63127-00 was based on the establishment of Grazing District #2.

#### **40C 169206-00**

18. Claim 40C 169206-00 is a stock claim for an unnamed tributary of Melnick Coulee. The claim appeared in the Basin 40C Preliminary Decree with the following point of diversion, reservoir record, and place of use:

<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		NE	SE	SE	33	14N	31E GARFIELD

19. BLM objected to the claim, stating that the legal land descriptions should be in Section 32, not Section 33. The NESESE of Section 33, T14N, R31E is located on private property. The NESESE of Section 32, T14N, R31E is located on BLM land.

### Notice-Type Issue Remarks

20. The claims received the following notice-type issue remarks:

*40C 62635-00*

SOURCE NAME AND POINT OF DIVERSION 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.

*40C 62636-00*

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.

SOURCE NAME AND POINT OF DIVERSION 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.

CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

*40C 62785-00*

THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

THE VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND VOLUME REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

*40C 62787-00*

THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

*40C 63127-00*

THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

THE VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND VOLUME REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

21. These 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.

22. Claims 40C 62636-00, 40C 62785-00, 40C 62787-00, and 40C 63127-00 received the following *Bean Lake* issue remark:

*40C 62636-00 and 40C 63127-00*

BECAUSE THIS CLAIM DID NOT RECEIVE A FACTUAL OR LEGAL ISSUE REMARK DURING THE CLAIMS EXAMINATION PROCESS, THE WATER COURT WILL NOT HOLD A HEARING ON THIS CLAIM UNDER MATTER OF THE ADJUDICATION OF EXISTING RIGHTS IN BASIN 411, 2002 MT 216, 311 MONT. 327, 55 P.3D 396 UNLESS A VALID OBJECTION IS FILED UNDER SECTION 85-2-233, MCA, OR THE WATER COURT CALLS THE CLAIM IN ON ITS OWN MOTION UNDER RULE 8, W.R.ADJ.R.

*40C 62785-00 and 40C 62787-00*

THE WATER COURT WILL HOLD A HEARING ON THIS CLAIM TO DETERMINE ITS VALIDITY SUBJECT TO SECTION 85-2-248, MCA, AND MATTER OF THE ADJUDICATION OF EXISTING RIGHTS IN BASIN 411, 2002 MT 216, 311 MONT. 327, 55 P.3D 396. A HEARING MAY ALSO BE HELD ON THIS CLAIM IF A VALID OBJECTION IS FILED UNDER SECTION 85-2-233, MCA, OR THE WATER COURT CALLS THE CLAIM IN ON ITS OWN MOTION UNDER RULE 8, W.R.ADJ.R.

23. The *Bean Lake* remarks are outdated and are no longer placed on claims. No hearing is necessary to determine the validity of these claims. Montana has recognized wildlife use as valid beneficial use of water. *In re Adjudication of Existing Rights to the Use of All Water*, 2002 MT 216, ¶ 40. The *Bean Lake* remark should be removed from the claims in this case.

### 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.

8. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

9. The party seeking to overcome the prima facie status of a Statement of Claim bears the burden of proof; this burden also applies to a claimant's objection to his own claim. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

10. Information remarks are "[r]emarks that limit, define, or explain unique aspects of a claim...." Rule 2(a)(57), W.R.C.E.R.

[M]any water rights cannot be accurately described by elements alone, and are therefore supplemented with information remarks.... Information remarks provide facts regarding prior use of a right that are critical to its administration in accord with historical use. ...[I]nformation remarks are routinely used by the Water Court to supplement abstracts.

76G-A8, Order Adopting Master's Report in Part, October 29, 2014.

#### CONCLUSIONS OF LAW

#### **40C 62635-00 and 40C 62636-00**

1. BLM overcame the prima facie status of claim 40C 62635-00 and 40C 62636-00 and showed the historically accurate place of use are described in Finding of Fact No. 3. These modifications resolve the place of use issue remark and BLM's

objection to the place of use. The place of use issue remark should be removed from the claim.

2. Although BLM provided evidence that the reservoir dimensions are as described in Finding of Fact No. 5, there is no evidence that the historically accurate volume of claims 40C 62635-00 and 40C 62636-00 are equal to one fill of the entire reservoir capacity (266.80 AF). BLM failed to overcome the prima facie status of the claimed volumes and show the historically accurate volume was 266.80 AF. However, to reflect the historical use of claims 40C 62635-00 and 40C 62636-00, the claimed volumes of 40C 62635-00 and 40C 62636-00 should be combined and each abstract should reflect a volume of 35.00 AF.

3. The information remark described in Finding of Fact No. 7 should be added to the point of diversion for claims 40C 62635-00 and 40C 62636-00.

**40C 62785-00**

4. The point of diversion and place of use issue remarks overcome the prima facie status of claim 40C 62785-00. BLM confirmed that the proposed modifications reflect the historical location of Brown Well. Therefore, the point of diversion and place of use should be modified to the SWSWNE of Section 28, T9N, R26E, Musselshell County. These modifications resolve the point of diversion and place of use issue remarks, and the remarks should be removed from the claim.

5. The priority date issue remark was resolved when the priority date was changed to November 17, 1981. This issue remark should be removed from the claim and the priority date should remain as November 17, 1981.

**40C 62787-00**

6. The volume issue remarks overcome the prima facie status of claim 40C 62787-00. The volume should be reduced to 16.11 AF. This reduction resolves the volume issue remarks, and the remarks should be removed from the claim.

**40C 63127-00**

7. The purpose issue remark overcomes the prima facie status of claim 40C 63127-00. BLM showed by a preponderance of the evidence that the priority date should be modified to July 11, 1935, and that the type of historical right should be modified to



“use”. These modifications resolve the purpose issue remark, and the remark should be removed from the claim.

**40C 169206-00**

8. BLM showed by a preponderance of the evidence that the section number for the point of diversion, reservoir record, and place of use is Section 32. The section number should be corrected accordingly. This correction resolves BLM’s objection to claim 40C 169206-00.

**Notice-Type Issue Remarks**

9. The notice-type issue remarks in Finding of Fact No. 20 provide notice of the changes made after completion of the Temporary Preliminary Decree proceedings and prior to issuance of the Preliminary Decree. The remark does not raise unresolved issues that need to be addressed. No proceedings are required to resolve the remarks; the remarks should be removed from the abstracts.

10. The *Bean Lake* issue remarks on claims 40C 62636-00, 40C 62785-00, 40C 62787-00, and 40C 63127-00 are outdated and no hearing is necessary to determine the validity of those claims. 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.

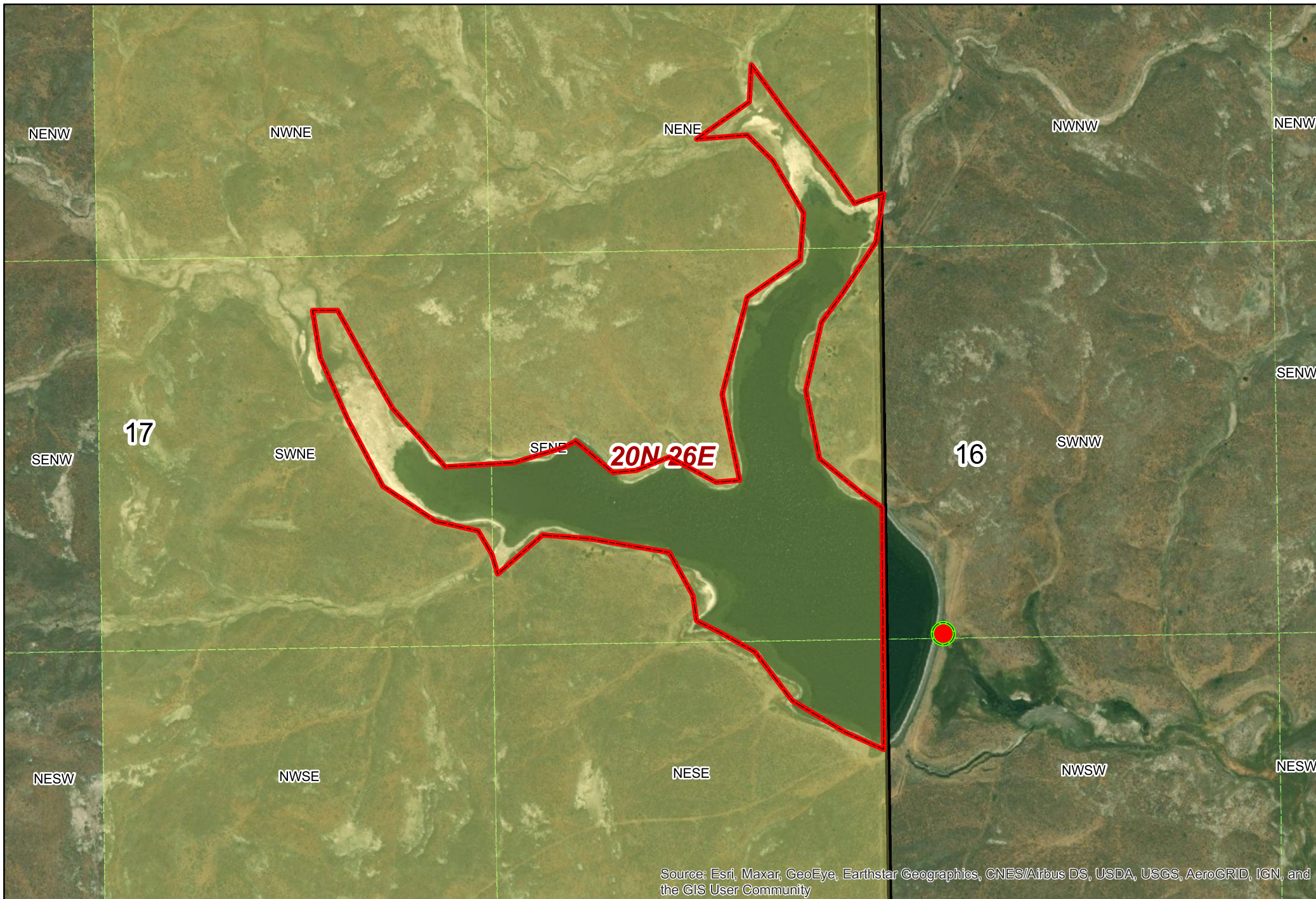
A post decree abstract of each water right claim reflecting the recommended changes is attached to this Report and a copy of the map depicting the corrected place of use for claims 40C 62635-00 and 62636-00 has been placed in the claim files.

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Melissa Lockman  
Senior Water Master

**Service via Electronic Mail**

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Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

**WATER COURT  
ABSTRACT OF WATER RIGHT CLAIM  
MUSSELSHELL RIVER, BELOW ROUNDUP  
BASIN 40C**

**Water Right Number:** 40C 62635-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)  
5001 SOUTHGATE DR  
BILLINGS, MT 59101 4669

**Priority Date:** AUGUST 19, 1939

**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:** 35.00 AC-FT

**Source Name:** WHISKER COULEE

**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		SWSWNW	16	20N	26E	FERGUS

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

THE DAM EXTENDS INTO THE NWNWSW SEC 16 TWP 20N RGE 26E FERGUS COUNTY, WHICH IS ON PRIVATELY-OWNED LAND.

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSWNW	16	20N	26E	FERGUS

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 29.00 FEET

**Depth:** 23.00 FEET

**Surface Area:** 29.00 ACRES

**Capacity:** 266.88 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>
1			NE	17	20N	26E	FERGUS
2			NENESE	17	20N	26E	FERGUS

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

62635-00

62636-00



**WATER COURT  
ABSTRACT OF WATER RIGHT CLAIM  
MUSSELSHELL RIVER, BELOW ROUNDUP  
BASIN 40C**

**Water Right Number:** 40C 62636-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)  
5001 SOUTHGATE DR  
BILLINGS, MT 59101 4669

**Priority Date:** AUGUST 19, 1939

**Type of Historical Right:** USE

**Purpose (Use):** WILDLIFE

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS  
ONSTREAM RESERVOIR.

**Volume:** 35.00 AC-FT

**Source Name:** WHISKER COULEE

**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		SWSWNW	16	20N	26E	FERGUS

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

THE DAM EXTENDS INTO THE NWNWSW SEC 16 TWP 20N RGE 26E FERGUS  
COUNTY, WHICH IS ON PRIVATELY-OWNED LAND.

**Reservoir:** OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSWNW	16	20N	26E	FERGUS

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 29.00 FEET

**Depth:** 23.00 FEET

**Surface Area:** 29.00 ACRES

**Capacity:** 266.88 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>
1			NE	17	20N	26E	FERGUS
2			NENESE	17	20N	26E	FERGUS

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

62635-00

62636-00

**WATER COURT  
ABSTRACT OF WATER RIGHT CLAIM  
MUSSELSHELL RIVER, BELOW ROUNDUP  
BASIN 40C**

**Water Right Number:** 40C 62785-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)  
5001 SOUTHGATE DR  
BILLINGS, MT 59101 4669

**Priority Date:** NOVEMBER 17, 1981

**Type of Historical Right:** USE

**Purpose (Use):** WILDLIFE

**Flow Rate:** 4.98 GPM

**Volume:** 7.25 AC-FT

**Source Name:** GROUNDWATER

**Source Type:** GROUNDWATER

ALSO KNOWN AS BROWN WELL

**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		SWSWNE	28	9N	26E	MUSSELSHELL

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** WELL

**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			SWSWNE	28	9N	26E	MUSSELSHELL

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

62785-00

62786-00



**WATER COURT  
ABSTRACT OF WATER RIGHT CLAIM  
MUSSELSHELL RIVER, BELOW ROUNDUP  
BASIN 40C**

**Water Right Number:** 40C 62787-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE  
**Owners:** USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)  
5001 SOUTHGATE DR  
BILLINGS, MT 59101 4669  
**Priority Date:** JUNE 23, 1966  
**Type of Historical Right:** FILED  
**Purpose (Use):** WILDLIFE  
**Flow Rate:** 9.96 GPM  
**Volume:** 16.11 AC-FT  
**Source Name:** GROUNDWATER  
**Source Type:** GROUNDWATER  
ALSO KNOWN AS LIND WELL

**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		SENWSW	31	9N	26E	MUSSELSHELL

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** WELL

**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			SENWSW	31	9N	26E	MUSSELSHELL

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

62787-00      62788-00

**WATER COURT  
ABSTRACT OF WATER RIGHT CLAIM  
MUSSELSHELL RIVER, BELOW ROUNDUP  
BASIN 40C**

**Water Right Number:** 40C 63127-00 RESERVED CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)  
5001 SOUTHGATE DR  
BILLINGS, MT 59101 4669

**Priority Date:** JULY 11, 1935

**Type of Historical Right:** USE

**Purpose (Use):** WILDLIFE

**Flow Rate:** 0.49 GPM

**Volume:** 0.18 AC-FT

**Source Name:** SPRING, UNNAMED TRIBUTARY OF BLOOD CREEK

**Source Type:** GROUNDWATER

ALSO KNOWN AS SWEETWATER SPRING

**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		NESW	30	17N	29E	PETROLEUM

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DEVELOPED SPRING

**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			NESW	30	17N	29E	PETROLEUM

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME POINT OF DIVERSION.

63127-00

63128-00

**WATER COURT  
ABSTRACT OF WATER RIGHT CLAIM  
MUSSELSHELL RIVER, BELOW ROUNDUP  
BASIN 40C**

**Water Right Number:** 40C 169206-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**\*Owners:** USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)  
5001 SOUTHGATE DR  
BILLINGS, MT 59101 4669

**Priority Date:** DECEMBER 31, 1955

**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 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 MELNICK COULEE

**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		NESESE	32	14N	31E	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>
	NESESE	32	14N	31E	GARFIELD

**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>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NESESE	32	14N	31E	GARFIELD