

Montana Water Court

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

\* \* \* \* \*

CLAIMANT: Byford Trucking Co.

CASE 40C-0387-R-2021  
40A 26235-00

**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**

Claim 40A 26235-00 appeared in the Preliminary Decree for the Musselshell River above Roundup (Basin 40A) and the Preliminary Decree for the Musselshell River

below Roundup (Basin 40C), both issued on June 7, 2017. The claim is owned by Byford Trucking Co. The claim 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

1. Claim 40A 26235-00 is an oil well drilling claim from the Musselshell River. The claim was filed with and appeared in both the Basin 40A and Basin 40C Preliminary Decrees with the following point of diversion and place of use:

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			6	8N	12E	WHEATLAND	
Period of Diversion: JANUARY 1 TO DECEMBER 31							
Diversion Means: PUMP							
TANK TRUCK USED TO CONVEY WATER.							
POINT OF DIVERSION IS MOVEABLE ALL ALONG MUSSELSHELL RIVER IN WHEATLAND, GOLDEN VALLEY, MUSSELSHELL AND PETROLEUM COUNTIES.							
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>
PLACE OF USE VARIES WITH OIL WELL DRILLING LOCATION.							

2. The claim received the following issue remarks:

THE PLACE OF USE LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

3. The DNRC claim examiner who placed these issue remarks on the claim made the following findings:

*Requires a place of use issue. The claim says, "all along the Musselshell River through Wheatland, Golden Valley, Musselshell, and Petroleum counties but a valid place of use should be clarified by the claimants. Even if it involves putting a TRS all along the Musselshell River. It appears that this claim should have matching points of diversion and places of use because of the movability or at least a home base, like where the owners of the tank truck live or where the headquarters for the trucking company are. That way, if the trucking company sells in the future a transfer can be made. P306 added, P36 added. MAH 12/13/2016*

4. On July 16, 2021, the Court ordered Claimant to meet with the DNRC to resolve the issue remarks on the claim. On September 9, 2021, DNRC Water Resources Specialist Matt Schmidt filed his *Memorandum*. The *Memorandum* stated that Claimant failed to contact the DNRC as ordered.

5. In his *Memorandum*, Mr. Schmidt recommended modifications to the point of diversion and place of use to resolve the issue remarks. Based on Mr. Schmidt's recommendations, the following modifications would resolve the issue remarks on claim 40A 26235-00:

*Point of Diversion*

<u>ID</u>	<u>Govt Lot</u>	<u>QtrSec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			6	8N	12E	Wheatland
2			36	19N	29E	Petroleum

**THE PUMP IS MOVEABLE ALONG THE MUSSELSHELL RIVER BETWEEN THE POINTS OF DIVERSION.**

*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>
<del>PLACE OF USE VARIES WITH OIL WELL DRILLING LOCATION.</del>						
1			6	8N	12E	Wheatland
2			36	19N	29E	Petroleum

**THE PLACE OF USE GENERALLY INCLUDES AREAS WITHIN 25 MILES OF THE MUSSELSHELL RIVER THROUGHOUT WHEATLAND, GOLDEN VALLEY, MUSSELSHELL, AND PETROLEUM COUNTIES. WATER IS APPROPRIATED FROM THE MUSSELSHELL RIVER AND TRANSPORTED TO VARIOUS SITES THROUGHOUT THE STATED COUNTIES.**

6. The Court ordered Claimant to show cause why the modifications proposed by the DNRC should not be implemented. The Order stated that if nothing was filed by the deadline, the claim would be modified as described in Finding of Fact No. 5. Nothing was filed by the deadline.

7. All mail sent to Claimant has been returned to the Court. The filings have been sent to all known addresses for Byford Trucking Co.

**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 fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

9. Sanctions applied against a claimant may include modification of a claim to conform with data provided by the DNRC, information obtained by the Court, or information included in an objection, or the entry of default and termination of a water right claim. Rule 11, W.R.Adj.R.

#### CONCLUSION OF LAW

1. The place of use and point of diversion issue remarks overcome the *prima facie* status of claim 40A 26235-00. Based on the information provided by Mr. Schmidt and Rule 22, W.R.Adj.R., the claim should be modified as described in Finding of Fact No. 5. These modifications resolve the issue remarks, and the remarks should be removed from the 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 the water right claim reflecting the recommended changes is attached to this Report.

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Melissa Lockman  
Senior Water Master

**Service via USPS Mail**  
Byford Trucking Co  
**316 Georgia Ave**  
**Deer Park, TX 77536-2506**

**Notice: Service List Updated 11.24.21**

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

**Water Right Number:** **40A 26235-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BYFORD TRUCKING CO  
% PSC INDUSTRIAL OUTSOURCING LTD  
1401 S 32ND ST W  
BILLINGS, MT 59102

**Priority Date:** APRIL 30, 1953

**Type of Historical Right:** USE

**Purpose (Use):** COMMERCIAL

**Purpose Clarification:** OIL WELL DRILLING

**Flow Rate:** 300.00 GPM

**Volume:** 12.00 AC-FT

**Source Name:** MUSSELSHELL RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<b>ID</b>	<b>Govt Lot</b>	<b>Qtr</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1			6	8N	12E	WHEATLAND

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

**Diversion Means:** PUMP

2		36	19N	29E	PETROLEUM
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PUMP

TANK TRUCK USED TO CONVEY WATER.

THE POINT OF DIVERSION OF THIS WATER RIGHT IS TRANSIORY ALONG THE MUSSELSHELL RIVER BETWEEN THE POINTS OF DIVERSION.

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

**Place of Use:**

<b>ID</b>	<b>Acres</b>	<b>Govt Lot</b>	<b>Qtr</b>	<b>Sec</b>	<b>Twp</b>	<b>Rge</b>	<b>County</b>
1				6	8N	12E	WHEATLAND
2				36	19N	29E	PETROLEUM

THE PLACE OF USE GENERALLY INCLUDES AREAS WITHIN 25 MILES OF THE MUSSELSHELL RIVER THROUGHOUT WHEATLAND, GOLDEN VALLEY, MUSSELSHELL, AND PETROLEUM COUNTIES. WATER IS APPROPRIATED FROM THE MUSSELSHELL RIVER AND TRANSPORTED TO VARIOUS SITES THROUGHOUT THE STATED COUNTIES.

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**Remarks:**

THIS APPROPRIATION OF WATER USES WATER IN THE MUSSELSHELL RIVER ABOVE ROUNDUP DRAINAGE (BASIN 40A) AND THE MUSSELSHELL RIVER BELOW ROUNDUP DRAINAGE (BASIN 40C). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.