

Montana Water Court  
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ELECTRONICALLY FILED

40A-0412-R-2021

July 20, 2021

Montana Water Court

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

\* \* \* \* \*

CLAIMANTS: I V Ranch Inc

**CASE 40A-0412-R-2021**  
40A 5796-00

**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. Because 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**

## FINDINGS OF FACT

1. Claim 40A 5796-00 was decreed with the following DNRC issue remarks:

POINT 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.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON MUSSELHELL RIVER WITH A PRIORITY DATE PREDATING CASE NO. 1148, GOLDEN VALLEY COUNTY.

2. No objections or notices or intent to appear were filed.

## PRINCIPLES AND CONCLUSIONS 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. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. With respect to the priority date of claim 40A 5796-00 in this Case, the only evidence before the Court is the existence of Case No. 1148 on the Musselshell River and the resulting issue remark that appeared on the claim. While historical decrees provide some evidence of existing water rights on a given source, they are not conclusive. Decrees were often the result of a specific controversy between water users; thus, rights were adjudicated on a piecemeal basis by the district courts. Further, decrees were usually limited in scope, and often multiple decrees were issued on the same stream. *See* Albert Stone, *Are There Any Adjudicated Streams in Montana?* 19 Mont. L. Rev. 19 (1957).

In short, there are numerous reasons why claim 40A 5796-00 may not have appeared in the earlier District Court decree and objectors bear the burden of establishing that the priority date should be something other than what was claimed. In this Case, the prima facie proof of priority date has not been overcome.

3. The point of diversion issue remark appearing on claim 43A 5796-00 is a notice-type issue remarks. As no objections were filed, no further proceedings are required.

## RECOMMENDATION

1. The issue remarks should be removed from claim 40A 5796-00 with no changes to the elements of the claim.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the recommended changes have been made in the state's centralized record system.

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Anika M. Stern  
Senior Water Master

### **Service via USPS Mail:**

I V Ranch Inc  
PO Box 792  
Harlowton, MT 59036

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

**Water Right Number:**      **40A 5796-00**      STATEMENT OF CLAIM

**Version:**      4 -- POST DECREE

**Status:** ACTIVE

**Owners:**      I V RANCH INC  
PO BOX 792  
HARLOWTON, MT 59036

**Priority Date:**      JULY 1, 1881

**Type of Historical Right:**      FILED

**Purpose (Use):**      IRRIGATION

**Irrigation Type:**      FLOOD

**\*Flow Rate:**      9.36 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:**      247.00

**Source Name:**      MUSSELSHELL RIVER

**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		SWSWNE	9	8N	12E	WHEATLAND

**Period of Diversion:**      APRIL 1 TO OCTOBER 15

**Diversion Means:**      HEADGATE

**Ditch Name:**      ANDERSON DITCH

**Period of Use:**      APRIL 1 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	42.00		S2S2S2	10	8N	12E	WHEATLAND
2	205.00		N2	15	8N	12E	WHEATLAND
<b>Total:</b>	247.00						