

40A-0523-R-2021

July 26, 2021

Montana Water Court

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

* * * * *

CLAIMANT: TG Ranchland LLC

OBJECTOR: TG Ranchland LLC

ON MOTION OF THE MONTANA WATER COURT

CASE 40A-0523-R-2021
40A 30109871

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. If 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

Water Right Claim 40A 30109871 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). The claim was the subject of a July 26, 2017 DNRC memorandum regarding potential changes or corrections to various claim abstracts. The Court called in Claim 40A 30109871 on its own motion on May 24, 2018 to address the issues raised by this memorandum. Claimant TG Ranchland LLC objected to the flow rate, volume, and source of this claim.

The Court consolidated this claim into Water Court Case 40A-0523-R-2021 on May 20, 2021. The consolidation order set a deadline by which Claimant and Potential Owner Grande Ranch Company were to file responsive information regarding the issues raised by the DNRC's July 26, 2017 memorandum.

On June 18, 2021, the parties filed a responsive document with the Court. Attorneys for Claimant TG Ranchland LLC, Hertha L. Lund and Christopher T. Scoones, also entered their appearance for Potential Owner Grande Ranch Company through this filing.

FINDINGS OF FACT

1. The DNRC filed a memorandum with the Court on July 26, 2017 regarding various claims in the adjudication. Claim 40A 30109871 is a subject of this memorandum. The DNRC states in the memorandum that the flow rate and volume should have standard remarks commonly added to livestock direct from source claims, that the source should be corrected to "surface," and that a potential ownership issue exists because the place of use includes land owned by Grande Ranch Company.

2. Claimant TG Ranchland LLC objected to Claim 40A 30109871 on the basis of volume, flow rate, and source. On the objection form, Claimant states that the claim needs a flow rate and volume.

3. The Preliminary Decree abstract for Claim 40A 30109871 appeared with blank flow rate and volume elements. It also appeared with the source reflected as "groundwater."

4. In Claimant and Potential Owner's June 18, 2021 filing, the parties state that they agree that the claimed water right is only used on land owned by TG Ranchland

LLC and that a remark should be added to the place of use to reflect historical use of the water right.

5. The parties agree that the following remark should be added to the claim abstract:

THE SOURCE, POINT OF DIVERSION, AND PLACE OF USE ARE LIMITED TO BRAIDED CHANNELS OF THE MUSSELSHELL RIVER, SOUTH FORK, LYING SOUTH OF THE ABANDONED RAILROAD BED.

6. The requested remark should be added to the claim abstract of Claim 40A 30109871.

7. Standard information remarks for livestock direct from source claims should be added to the flow rate and volume of Claim 40A 30109871.

8. The source for Claim 40A 301098471 should be corrected to “surface.”

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 may issue such orders on its own motion as may be reasonably required to allow it to determine whether a claim accurately reflects its claimed pre-July 1, 1973 beneficial use. In reviewing claims called in on its own motion, the Water Court shall generally follow the procedures set forth in Section 85-2-248, MCA.

CONCLUSIONS OF LAW

1. The changes described in the Findings of Fact may be made because the evidence refines and clarifies the historical use of the claimed water right. There is no requested expansion of the claim.

2. The above-described changes resolve the issues raised by the memorandum and called in on motion by the Court and resolve Claimant’s objection.

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. A post-decree abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

Colton J. Lauer
Water Master

Service via USPS Mail:

Potential Owner (Last Order):
Grande Ranch Company
149 Grande Rd
Martinsdale, MT 59053

Service Via Electronic Mail:

Christopher T. Scoones
Lund Law PLLC
662 S. Ferguson Ave., Unit 2
Bozeman, MT 59718
(406) 586-6254
Scoones@Lund-Law.com

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

Water Right Number: 40A 30109871 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: TG RANCLAND LLC
143 VOLDSETH ROAD
MARTINSDALE, MT 59053 8732

Priority Date: AUGUST 16, 1877

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 WATER 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: MUSSELSHELL RIVER, SOUTH FORK

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		NWNWNE	31	8N	10E	MEAGHER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		NENENW	31	8N	10E	MEAGHER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		NWNENW	31	8N	10E	MEAGHER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		SWNENW	31	8N	10E	MEAGHER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		NENWNW	31	8N	10E	MEAGHER
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

<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			NWNWNE	31	8N	10E	MEAGHER
2			NENENW	31	8N	10E	MEAGHER
3			NWNENW	31	8N	10E	MEAGHER
4			SWNENW	31	8N	10E	MEAGHER
5			NENWNW	31	8N	10E	MEAGHER
6			NWNWNW	31	8N	10E	MEAGHER
7			SENWNW	31	8N	10E	MEAGHER
8			SWNWNW	31	8N	10E	MEAGHER

THE SOURCE, POINT OF DIVERSION, AND PLACE OF USE ARE LIMITED TO BRAIDED CHANNELS OF THE MUSSEL-SHELL RIVER, SOUTH FORK, LYING SOUTH OF THE ABANDONED RAILROAD BED.