

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

\*\*\*\*\*

CLAIMANTS: John J. Crowley; Roger A. Lindsley

**CASE 40A-6005-A-2020**  
40A 112882-00

**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. 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

Claim 40A 112882-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A) issued on June 7, 2017. The claim is owned by John J. Crowley and Roger A. Lindsley. The claim did not receive objections, counterobjections, notices of intent to appear, or issue remarks.

### FINDINGS OF FACT

1. On November 30, 2020, Claimants filed their *Verified Motion to Amend Water Right Claim* for claim 40A 112882-00. The *Motion* requests correction of the point of diversion and place of use legal land descriptions.

2. Claim 40A 112882-00 is a stock claim for a spring. The spring is an unnamed tributary of the West Fork of Hopley Creek.

3. The claim appeared in the Basin 40A Preliminary Decree with the following point of diversion and 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		NENWSW		23	10N	13E Wheatland

4. The *Motion* requests the following corrections to the point of diversion and 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		<del>NENWSW</del>		23	10N	13E Wheatland
		<b><u>NWSW</u></b>				

5. The Statement of Claim listed the point of diversion and place of use as they appeared in the Basin 40A Preliminary Decree.

6. However, the map attached to the Statement of Claim shows the claimed spring near the road running through Section 23. Additionally, the Declaration of Vested Groundwater Rights form attached to the Statement of Claim indicated the spring was located in the SW of Section 23.

7. Although only the SW quarter section was listed on the form, the original claimant marked a number of locations (presumably the place of use for both the intended irrigation and stock uses) throughout the south half of Section 23. Nothing was marked in the north half of Section 23.

8. Both the map and the Declaration attached to the Statement of Claim are consistent with Claimants' requested corrections to claim 40A 112882-00. It appears the Statement of Claim contains a clerical error.

#### 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. After the issuance of a temporary preliminary decree and close of the objection period in a basin, a claimant may amend its Statement of Claim. Section 85-2-233(6), MCA.

6. Notice is required to other water users if a motion to amend may adversely affect other water rights. Section 85-2-233(6), MCA.

7. A claimant asserting an amendment to its claim has the burden to show that the historical use of the claim is accurately reflected by the requested amendment. *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558.

8. The Court may correct a clerical mistake found in a judgment, order, or other part of the record on motion or on its own, with or without notice. Rule 60(a), M.R.Civ.P.

#### CONCLUSIONS OF LAW

1. The *Motion* does not have the reasonable potential to adversely affect other water rights. The proposed amendment to the point of diversion and place of use are

clerical corrections to the paper abstract and do not make any changes to the actual historical use of the right. No further notice is required.

2. Claimants showed by a preponderance of the evidence that the historically accurate point of diversion and place of use for claim 40A 112882-00 is the NWSWSW of Section 23, T10N, R13E, Wheatland County. The evidence in the claim file shows the Statement of Claim contained a clerical error in the legal land descriptions. The point of diversion and place of use should be corrected accordingly.

### 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 and a copy of the map depicting the corrected point of diversion and place of use has been placed in the claim file.

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Melissa Lockman  
Water Master

### **Service via USPS Mail**

John J Crowley  
Roger A Lindsley  
PO Box 617  
Harlowton, MT 59036-0617  
406-632-5898 H  
406-749-0420 C

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

**Water Right Number:**      **40A 112882-00**      STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:** ACTIVE

**Owners:**      JOHN J CROWLEY  
                 PO BOX 617  
                 HARLOWTON, MT 59036 0617

                 ROGER A LINDSLEY  
                 PO BOX 617  
                 HARLOWTON, MT 59036 0617

**Priority Date:**      SEPTEMBER 24, 1937

**Type of Historical Right:**      FILED

**Purpose (Use):**      STOCK

**Flow Rate:**      7.00 GPM

**Volume:**      THIS 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:**      SPRING, UNNAMED TRIBUTARY OF HOPLEY CREEK, WEST FORK

**Source Type:**      GROUNDWATER

**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		NWSWSW	23	10N	13E	WHEATLAND

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

**Diversion Means:**      FLOWING

**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			NWSWSW	23	10N	13E	WHEATLAND



# 40A 112882-00 Correction

