

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

CLAIMANT: Lek Ranch LLC

OBJECTOR: State of Montana Attorney General

40C-0120-R-2019
40C 112994-00

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

These claims were originally consolidated into Case 40C-R-120. The parties are advised that the case number for this case has been modified to reflect the Court's new case management system protocol. All future filings shall use the updated case number in the caption and all case references.

Claim 40C 112994-00 appeared in the Preliminary Decree for the Musselshell River, Below Roundup (Basin 40C) issued on June 7, 2017. The claim is owned by Lek Ranch LLC. The claim did not receive objections or notices of intent to appear, but the claim did receive issue remarks during the DNRC's claims examination.

FINDINGS OF FACT

1. Claim 40C 112994-00 is a sprinkler irrigation claim for use on 140.00 acres in the NW of Section 12, T15N, R28E, Petroleum County.

2. The claim appeared in the Basin 40A Preliminary Decree with its point of diversion as a dam in the NWNENW of Section 12, T15N, R28E, Petroleum County. The claim was also decreed with an onstream reservoir (Field Reservoir) also in the NWNENW of Section 12.

3. The claim received the following issue remark:

EXISTENCE OF THE CLAIMED RESEVOIR CANNOT BE CONFIRMED
WITH AVAILABLE DATA.

4. On February 20, 2019, the Court ordered Claimant to work with the DNRC to resolve the issue remark.

5. On December 23, 2019, Water Resources Specialist Matt Schmidt file his Memorandum in this matter.

6. Mr. Schmidt reviewed an affidavit signed by Victor Manuel on November 19, 2019. Mr. Manuel's affidavit stated that the point of diversion should be in the SESESW of Section 1 on Cat Creek and that this has been the point of diversion for claim 40C 112994-00 since the 1940s.

7. Mr. Schmidt found that the requested modifications changed the nature of the claim significantly and did not recommend removal of the issue remark from the claim. Additionally, Mr. Schmidt stated that because claim 40C 112994-00 is a multiple

use of claim 40C 112985-00, any modifications to claim 40C 112994-00 would also need to be made to claim 40C 112985-00.

8. Based on Mr. Schmidt's findings, the Court joined the State of Montana Attorney General to this matter.

9. On June 3, 2020, Claimant file their *Unopposed Motion to Amend Statement of Claim*. The *Motion* requests modifying the point of diversion to the SESESW of Section 1, T15N, R28E based on Mr. Manuel's affidavit.

10. The *Motion* states that the Attorney General "does not oppose [the] motion if the provisions of §85-2-233(6), MCA are fulfilled."

11. Lek Ranch LLC owns the entirety of Section 1 and the majority of Section 12. The remainder of Section 12 is owned by Victor Manuel Farm Inc.

12. The Statement of Claim for claim 40C 112994-00 was filed by Walter Manuel of Manuel Ranch Inc.

13. The map attached to the Statement of Claim shows the place of use in Section 12, "Manuel Old Ditch Not Used" marked in Section 2, and "Manuel Ditches, Dikes & Dam" throughout Section 1.

14. According to the *Motion*:

See attached Affidavit of Victor Manuel. The correct Point of Diversion on the map attached to Victor Manuel's Affidavit identifies the location of the headgate and pump that feeds water to the sprinkler system located in the NW4 of Section 12, T15 N, R28 E. The headgate sits just to the east of Cat Creek in what is otherwise a creek bed that feeds runoff into Cat Creek unless the headgate is closed. Victor Manuel confirmed in his Affidavit that the small reservoir located in the NW4 Section 12, Township 15 North, Range 28 East was never used to supply water to the sprinkler system.

15. No objections were filed to claim 40C 112994-00. Additionally, the only other water rights on the claimed source, an unnamed tributary of Cat Creek, in Sections 1 12, T15N, R28E, Petroleum County are owned by LEK Ranch LLC.

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

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

10. 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.

CONCLUSIONS OF LAW

1. Further notice of the requested amendment to the point of diversion is not required. The point of diversion for claim 40C 112994-00 appeared on the Basin 40C Objection List and the *Motion* will not adversely affect other water rights. LEK Ranch LLC is the only other water user on the claimed source between the claimed point of diversion and the amended point of diversion. Additionally, the State reviewed the requested amendment and was agreeable to the modifications.

2. Claimant showed by a preponderance of the evidence that the historically accurate point of diversion for claim 40C 112994-00 is in the SESESW of Section 1, T15N, R28E, Petroleum County. The point of diversion should be amended accordingly, and the means of diversion should be amended to “headgate”. To more accurately reflect how the claimed water is diverted, a reservoir record should remain on the claim to capture the section of the creek bed used to hold the diverted water and an information remark describing how water is diverted and pumped to the place of use should be added to 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 and a copy of the map depicting the amended point of diversion has been placed in the claim file.

Melissa Lockman
Water Master

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Note: Service List Updated 6.9.21

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

Water Right Number: 40C 112994-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LEK RANCH LLC
% RACE FOSTER
PO BOX 70
HAZELHURST, WI 54531 0070

Priority Date: JANUARY 1, 1945

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

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

Volume: 191.30 AC-FT

Climatic Area: 1 - HIGH

Maximum Acres: 140.00

Source Name: UNNAMED TRIBUTARY OF CAT CREEK

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 | | SESESW | 1 | 15N | 28E | PETROLEUM |

Period of Diversion: APRIL 20 TO SEPTEMBER 20

Diversion Means: HEADGATE

MEANS OF DIVERSION INCLUDES A PUMP.

THE HEADGATE BACKS UP WATER INTO A DEPRESSION IN THE CREEK BED FROM WHICH WATER IS PUMPED INTO THE SPRINKLER SYSTEM.

Reservoir: ONSTREAM

| <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------------|----------------|------------|------------|------------|---------------|
| | SESESW | 1 | 15N | 28E | PETROLEUM |

Diversion to Reservoir: DIVERSION # 1

Period of Use: APRIL 20 TO SEPTEMBER 20

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 | 140.00 | | NW | 12 | 15N | 28E | PETROLEUM |

Total: 140.00

Remarks:

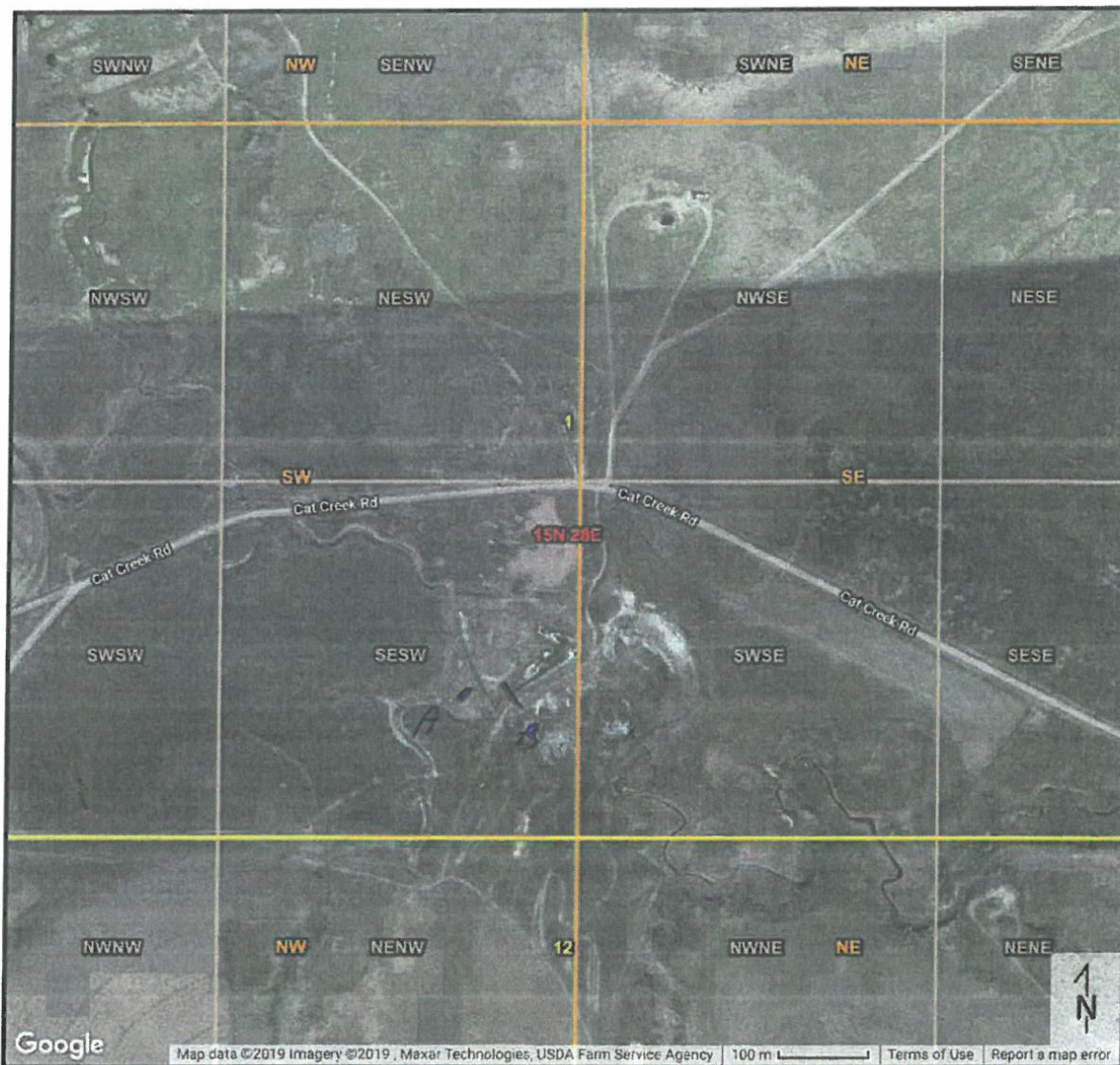
THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

112991-00 112993-00 112994-00 112996-00

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.

112985-00 112994-00

LEK RANCH, LLC



Map Layers

Survey

PLSS

- Township Ranges
- Sections
- Quarters
- Second Divisions

S01, T15 N, R28 E, SESESW

PETROLEUM COUNTY

HEADGATE, PUMP, &
CREEK DEPRESSION

A: PUMP
B: HEADGATE
Ante Manuel