

Montana Water Court
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40C-4005-S-2021

July 20, 2021

Montana Water Court

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

* * * * *

CLAIMANTS: Bliss Livestock Co.; Matthew J. Bliss; D K Inc.

CASE 40C-4005-S-2021
40C 167454-00
40C 30151585
40C 30151586

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 40C 167454-00 appeared in the Preliminary Decree for the Musselshell River, below Roundup (Basin 40C). On February 18, 2021 the Water Court received a memorandum filed by the Glasgow Regional Office of the DNRC. The memorandum includes a summary of a Form 641 filed to split Claim 40C 167454-00 as well as the form itself and relevant materials.

The Court consolidated this claim into Water Court Case 40C-4005-S-2021 on March 11, 2021. The consolidation order summarized the requested split and set a deadline by which Claimants could respond with comments. Cheryle Bliss of Claimant Bliss Livestock Co. filed a response on April 14, 2021. Cheryle bliss filed an additional response on April 22, 2021. On June 16, 2021, Claimants filed a joint response regarding the animal units of each proposed child claim.

FINDINGS OF FACT

1. The February 18, 2021 DNRC memorandum includes a Form 641 filed by Bliss Livestock Company and signed by Claimants Bliss Livestock Company, DK Inc., and Matthew Bliss. Attached to the Form 641 are copies of relevant deeds.

2. The parties requested through this Form 641 that Claim 40C 167454-00 be split with each co-owner receiving the following portions:

Bliss Livestock Company -

E2NW, Section 7, T17N, R33E, Garfield County

S2NE, Section 7, T17N, R33E, Garfield County

S2SENE, Section 8, T17N, R33E, Garfield County

S2SWNE, Section 8, T17N, R33E, Garfield County

D K Inc. -

W2NW, Section 7, T17N, R33E, Garfield County

N2NESE, Section 7, T17N, R33E, Garfield County

S2SENE, Section 8, T17N, R33E, Garfield County

S2SWNW, Section 8, T17N, R33E, Garfield County

Mathew J. Bliss –

N2NESE, Section 8, T17N, R33E, Garfield County
S2SENW, Section 9, T17N, R33E, Garfield County
N2SE, Section 9, T17N, R33E, Garfield County
N2N2SW, Section 9, T17N, R33E, Garfield County
N2SW, Section 10, T17N, R33E, Garfield County

3. The parties included with the Form 641 various relevant marked-up aerial images depicting the ownership of the claimed place of use. The parties also included with the Form 641 relevant deeds evidencing the transfer of portions of the claimed place of use amongst the co-owners of the above-captioned claim.

4. The Court's consolidation order issued on March 11, 2021 requested that the parties provide information regarding how the animal units of the parent claim should be divided. The order also provided Dixon and Zane Murnion an opportunity to assert an ownership interest in the above-captioned claim.

5. Neither Dixon nor Zane Murnion participated in proceedings in this case. Accordingly, Dixon and Zane Murnion were removed from the service list of this case on May 24, 2021.

6. The portion of the place of use owned by Dixon and Zane Murnion will not be included in the split of Claim 40C 167454-00.

7. Claimants' June 16, 2021 filing is a scanned document stating that each Claimant should received 408 Animal Units (AUs). Each Claimant is listed next to a notation indicating the claimant's portion of 408 AUs. Below each claimant name is a signature of either the claimant or a member of the claimant organization.

8. Claim 40C 167454-00 should be split into three claims consisting of Parent Claim 40C 167454-00 and two child Claims 40C 30151585 and 40C 301514586.

9. Claim 40C 167454-00 should be split as follows, with any unnoted elements remaining the same across all three claims:

Claim 40C 167454-00 -

Ownership: Bliss Livestock Co.

POD/POU: E2NW, Section 7, T17N, R33E, Garfield County

S2NE, Section 7, T17NN, R33E, Garfield County

S2SENE, Section 8, T17N, R33E, Garfield County

S2SWNE, Section 8, T17N, R33E, Garfield County

Add volume information remark: "The total number of animal units serviced by this right cannot exceed 408 animal units."

Claim 40C 30151585 -

Ownership: D K Inc.

POD/POU: W2NW, Section 7, T17N, R33E, Garfield County

N2NESE, Section 7, T17N, R33E, Garfield County

S2SENE, Section 8, T17N, R33E, Garfield County

S2SWNE, Section 8, T17N, R33E, Garfield County

Add volume information remark: "The total number of animal units serviced by this right cannot exceed 408 animal units."

Claim 40C 30151586 -

Ownership: Matthew J. Bliss

POD/POU: N2NESE, Section 8, T17N, R33E, Garfield County

S2SENE, Section 9, T17N, R33E, Garfield County

N2SE, Section 9, T17N, R33E, Garfield County

N2N2SW, Section 9, T17N, R33E, Garfield County

N2SW, Section 10, T17N, R33E, Garfield County

Add volume information remark: "The total number of animal units serviced by this right cannot exceed 408 animal units."

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 split claims into separate claims at any time prior to a final decree in a basin. Rule 26, W.R.Adj.R. This split may be made upon request of the claimants or on the Court's own initiative. *Id.*

CONCLUSION OF LAW

1. The information submitted to the DNRC and filed with the Court is sufficient to support splitting Claim 40C 167454-00 as described in the Findings of Fact.

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:

Bliss Livestock Co.
Matthew J. Bliss
495 Twin Buttes Rd
Sand Springs, MT 59077

D K Inc.
1503 N Lodge Pole Rd
Sand Springs, MT 59077

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

Water Right Number: 40C 167454-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: BLISS LIVESTOCK CO
495 TWIN BUTTES RD
SAND SPRINGS, MT 59077

Priority Date: DECEMBER 31, 1914

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 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.

THE TOTAL NUMBER OF ANIMAL UNITS SERVICED BY THIS RIGHT CANNOT EXCEED 408 ANIMAL UNITS

***Source Name:** UNION 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		E2NW	7	17N	33E	GARFIELD

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		S2NE	7	17N	33E	GARFIELD
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3		S2SENE	8	17N	33E	GARFIELD
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

4		S2SWNE	8	17N	33E	GARFIELD
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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>
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1	E2NW	7	17N	33E	GARFIELD
2	S2NE	7	17N	33E	GARFIELD
3	S2SENE	8	17N	33E	GARFIELD
4	S2SWNE	8	17N	33E	GARFIELD

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

Water Right Number: 40C 30151585 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: D K INC
1503 N LODGE POLE RD
SAND SPRINGS, MT 59077

Priority Date: DECEMBER 31, 1914

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 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.

THE TOTAL NUMBER OF ANIMAL UNITS SERVICED BY THIS RIGHT CANNOT EXCEED 408 ANIMAL UNITS

Source Name: UNION 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		W2NW	7	17N	33E	GARFIELD

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		N2NESE	7	17N	33E	GARFIELD
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3		S2SENW	8	17N	33E	GARFIELD
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

4		S2SWNW	8	17N	33E	GARFIELD
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Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

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>
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1	W2NW	7	17N	33E	GARFIELD
2	N2NESE	7	17N	33E	GARFIELD
3	S2SENW	8	17N	33E	GARFIELD
4	S2SWNW	8	17N	33E	GARFIELD

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

Water Right Number: 40C 30151586 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: MATTHEW J BLISS
495 TWIN BUTTES RD
SAND SPRINGS, MT 59077 9511

Priority Date: DECEMBER 31, 1914

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 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.

THE TOTAL NUMBER OF ANIMAL UNITS SERVICED BY THIS RIGHT CANNOT EXCEED 408 ANIMAL UNITS

Source Name: UNION 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		N2NESE	8	17N	33E	GARFIELD
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		S2SENW	9	17N	33E	GARFIELD
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		N2SE	9	17N	33E	GARFIELD
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4		N2N2SW	9	17N	33E	GARFIELD
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		N2SW	10	17N	33E	GARFIELD
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

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			N2NESE	8	17N	33E	GARFIELD
2			S2SESW	9	17N	33E	GARFIELD
3			N2SE	9	17N	33E	GARFIELD
4			N2N2SW	9	17N	33E	GARFIELD
5			N2SW	10	17N	33E	GARFIELD