

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

40A-0198-R-2021

September 17, 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: Barbara J. Pirrie; Joseph D. Pirrie

CASE 40A-0198-R-2021
40A 205449-00

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. Irrigation claim 40A 205449-00 was decreed with a single DNRC issue remark:

AN AMENDMENT WAS SUBMITTED ON 02/22/2016 REQUESTING TO AMEND THE TYPE OF RIGHT. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

2. Claim 40A 205449-00 was claimed and decreed as a “filed” right, but no filing was submitted to support the type of historical right.

3. On February 22, 2016, Claimants Joseph D. Pirrie and Barbara J. Pirrie filed an Amendment changing the type of historical right from “filed” to “use.” The Amendment was supported by an Affidavit in which Joseph D. Pirrie stated that he was born on June 28, 1924 and that his parents homestead the Hedgesville area. As a child, Mr. Pirrie played in the ditch described by claim 40A 205449-00 and he crossed the ditch to attend Sunday School. Mr. Pirrie’s first memory of playing in the ditch was when he was four years old, but he remembers his brothers talking about playing in the ditch before he was allowed to play with them. Copies of the Motion to Amend and the Affidavit are attached.

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. The record in the present Case justifies changing the type of historical right from “filed” to “use.”

RECOMMENDATIONS

1. The type of historical right for claim 40A 205449-00 should be changed from “filed” to “use.”

2. The issue remark should be removed from the claim.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm the terms of the claim in the state's centralized record system.

Anika M. Stern
Senior Water Master

Service via USPS Mail:

Barbara J. Pirrie
PO Box 57
Shawmut, MT 59078

Joseph D. Pirrie
878 MT Hwy 297
Shawmut, MT 59078-0057

RECEIVED - DNRC

FEB 08 2016

STATE OF MONTANA)
)
:SS
County of Wheatland)

Lewistown Water Resources

I, Joseph D. Pirrie of Hedgesville Montana, being first duly sworn, do hereby
depose and say:

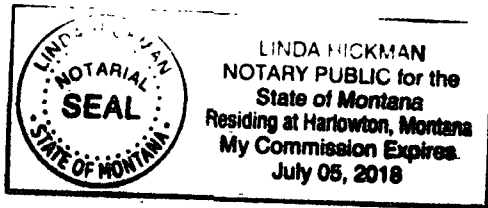
- I was born on June 28, 1924.
- I have lived most of my life in the Hedgesville area, North of Shawmut ,
Wheatland County Montana.
- I filed a claim for water rights on the Mussellshell River Drainage, 40A
205449-00.
- My parents homesteaded the Hedgesville area.
- I remember, as a child, playing in the ditch that is in question in this water
right. I also remember that when my older brothers and I would go to
Sunday School we would have to cross the ditch. My brothers finally found
a plank and placed it across the ditch so that we could cross safely without
having to walk to a narrower part of the ditch to cross.
- My first memory of playing in or crossing the ditch is when I was about 4
years of age. I also remember my brothers talking about playing in and
around the ditch before I was allowed to play there.
- The water from this ditch services the 102 acres as shown on the place of
use on the claim.

- This ditch is shown in the Water Resources Survey II for Wheatland County on T8N, R18E, Wheatland County, as the Holmes and Pirrie Flood Ditch, which was published in July of 1949.

- Joseph D. Pirrie
Joseph D. Pirrie

SUBSCRIBED AND SWORN TO BEFORE ME THIS 4th DAY OF
FEBRUARY, 2016.

- Linda Hickman
Linda Hickman
Notary Public for State of Montana



DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION ADJ 40A 205449-00

Lewistown Water Resources Regional Office



STEVE BULLOCK, GOVERNOR

PHONE: (406) 538-7459
FAX: (406) 538-7089

613 NE Main St, Suite E
Lewistown, MT 59457

February 9, 2016

JOSEPH D & BARBARA J PIRRIE
878 MT HWY 297
SHAWMUT, MT 59078

COPY

Claim Numbers(s): 40A 205449-00

Dear Mr. Pirrie,

Thank you for submitting your affidavit to our office yesterday. As requested, and per our telephone conversation this morning, I have enclosed a partially completed amendment form. If you wish to change your "Type of Historical Right" from "filed" to "use," please complete the enclosed amendment form, sign and date the form, and return it to our office. Because both you and Barbara are listed as owners of claim no. 40A 205449-00, both of you will need to sign the amendment form.

Please call me at (406) 538-7459 if you have any questions or if I can assist you further with the enclosed.

Sincerely,

A handwritten signature in cursive script that reads "Melissa Norris".

Melissa Norris
DNRC/Lewistown Regional Office

Enclosures: Amendment Form and Copy of Pirrie Affidavit

AMENDMENT TO STATEMENT OF CLAIM RECEIVED - DNRC

Claim-Number(s): 40A-205449-00

FEB 22 2016

Owner(s): JOSEPH D PIRRIE & BARBARA J PIRRIE

I make the following amendment(s) to the above statement of claim(s): Lewistown Water Resources

(Complete only those sections that require amendment.)

1. Purpose (use):

- a. If irrigation, method of irrigation use [] Sprinkler [] Flood [] Water spreading [] Subirrigation [] Natural Overflow

b. If domestic, number of households served:

c. If stock, total number and type of livestock served:

2. Source of Water: Tributary of

3. Point of Diversion: County - [] See attachment

Table with 3 rows for Lot, Block, and 1/4 Section, and columns for T and R.

- [] Replaces claimed information [] Supplements claimed information [] Addendum included

If the P.O.D is being amended, attach a map showing all points of diversion for this water right.

4. Period of Diversion: (Month/Day TO Month/Day)

- 5. Means of Diversion: [] Well [] Instream Use [] Dam [] Headgate [] Pump: Capacity - gpm [] Other -

- 6. Means of Conveyance: [] Ditch [] Pipeline [] Instream Use [] Other -

7. Place of Use: County - [] See attachment

Table with 5 rows for acres, Lot, Block, and 1/4 Section, and columns for T and R.

- [] Replaces claimed information [] Supplements claimed information [] Addendum included

If the P.O.U. is being amended, attach a map showing entire place of use for this water right.

8. Flow Rate Claimed: _____
 cubic feet per second
 gallons per minute
 miner's inches

9. Volume Claimed: _____ acre-feet per year

10. Period(s) of Use: _____
(Month/Day TO Month/Day)

11. Priority Date: (date of first use) _____
(Month/Day/Year)

12. Type of Historical Right: Decreed Right
 Filed Appropriation Right
 Use-Right

Please attach proof of priority date or type of right.

13. Reasons for Amendment: ~~Correcting type of historical right~~

14. Comments: _____

15. Notarized Statement Signed by Owner: See attachment
I declare under penalty of perjury (§ 45-7-201, MCA) under the laws of the state of Montana that the foregoing content of this form is true and correct. I further declare that I have the authority to sign this document for myself as an individual or in representational capacity as an officer of a corporation, member of a limited liability company, general partner of a limited partnership, trustee for a trust or other official capacity for an entity as defined under "person" in §85-2-102, MCA. (All current owners of the right as listed in the DNRC centralized record system are required to sign. Please attach DNRC's Amendment Agreement form if additional owner signatures are needed.)

Joseph D Pirrie

Typed or Printed Name

I

Joseph D Pirrie 2-22-16
Signature Joseph D Pirrie Date

Barbara J Pirrie

Typed or Printed Name

I

Barbara J Pirrie 2-22-2016
Signature Barbara J Pirrie Date

Typed or Printed Name Office/Title

Signature Date

COPY

STATE OF MONTANA)
 :SS
County of Wheatland)

I, Joseph D. Pirrie of Hedgesville Montana, being first duly sworn, do hereby depose and say:

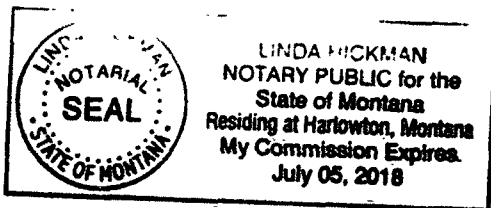
- I was born on June 28, 1924.
- I have lived most of my life in the Hedgesville area, North of Shawmut , Wheatland County Montana.
- I filed a claim for water rights on the Mussellshell River Drainage, 40A 205449-00.
- My parents homesteaded the Hedgesville area.
- I remember, as a child, playing in the ditch that is in question in this water right. I also remember that when my older brothers and I would go to Sunday School we would have to cross the ditch. My brothers finally found a plank and placed it across the ditch so that we could cross safely without having to walk to a narrower part of the ditch to cross.
- My first memory of playing in or crossing the ditch is when I was about 4 years of age. I also remember my brothers talking about playing in and around the ditch before I was allowed to play there.
- The water from this ditch services the 102 acres as shown on the place of use on the claim.

- This ditch is shown in the Water Resources Survey II for Wheatland County on T8N, R18E, Wheatland County, as the Holmes and Pirrie Flood Ditch, which was published in July of 1949.

- Joseph D. Pirrie
Joseph D. Pirrie

SUBSCRIBED AND SWORN TO BEFORE ME THIS 4th DAY OF
FEBRUARY, 2016.

- Linda Hickman
Linda Hickman
Notary Public for State of Montana



REVIEW ABSTRACT OF WATER RIGHT CLAIM

filed notice index
IMPORTANT NOTICE

AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED IN ACCORDANCE WITH THE SUPREME COURT RULES GOVERNING THE EXAMINATION OF THIS CLAIM.

Water Right Number: 40A 205449-00 STATEMENT OF CLAIM

Version: 3 -- REEXAMINED

Status: ACTIVE

Late Claim:A

Owners:

JOSEPH D PIRRIE
878 MT HWY 297
SHAWMUT, MT 59078-0057

BARBARA J PIRRIE
PO BOX 57
SHAWMUT, MT 59078

Priority Date: MARCH 1, 1928

Enforceable Priority Date: MARCH 1, 1928

CLAIM FILED LATE 05/03/82 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL FEDERAL AND INDIAN RESERVED WATER RIGHTS.

Type of Historical Right: FILED → *amended to "use" on 02/22/2016*

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.87 CFS

Volume: 328.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 102.00

Source: CARELESS CREEK

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		NE	SE	8	8N	18E WHEATLAND

Period of Diversion: MARCH 1 TO JULY 4

Diversion Means: HEADGATE

Ditch Name: HOLMES AND PIRRIE FLOOD DITCH

Period of Use: MARCH 1 to JULY 4

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	85.00		NE	17	8N	18E	WHEATLAND
2	17.00		N2NE	SE	17	8N	18E WHEATLAND
Total:	102.00						

Remarks:

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

AN AMENDMENT WAS SUBMITTED ON 02/22/2016 REQUESTING TO AMEND THE TYPE OF RIGHT. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

↳ added. Was unable to find filed approp document so he opted to amend to a use right + submit his own affidavit as proof. UMN
(removed P355 issue based on submitted amendment + affidavit.)

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION ADJ 40A 205449-00

Lewistown Water Resources Regional Office



STEVE BULLOCK, GOVERNOR

PHONE: (406) 538-7459
FAX: (406) 538-7089

613 NE Main St. Suite E
Lewistown, MT 59457

February 23, 2016

JOSEPH D & BARBARA J PIRRIE
878 MT HWY 297
SHAWMUT, MT 59078

COPY

Claim Numbers(s): 40A 205449-00

Dear Mr. Pirrie,

Thank you for returning your water right amendment. Based on the submitted materials (your affidavit on 02/08/2016 and your amendment on 02/22/2016) it appears the recently identified issue to irrigation claim no. 40A 205449-00 has been resolved. Another remark was added to your claim identifying your intent to amend the Type of Historical Right from "filed" to "use." It is my understanding this remark is intended to serve as notice to other water users of your change in Type of Historical Right. A copy of your updated water right abstract is enclosed.

Please call me at (406) 538-7459 if you have any questions or if I can assist you further.

Sincerely,

A handwritten signature in cursive script that reads "Melissa Norris".

Melissa Norris
DNRC/Lewistown Regional Office

Enclosures: Updated Review Abstract

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

Water Right Number: 40A 205449-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Late Claim: A

Owners: BARBARA J PIRRIE
PO BOX 57
SHAWMUT, MT 59078

JOSEPH D PIRRIE
878 MT HWY 297
SHAWMUT, MT 59078 0057

Priority Date: MARCH 1, 1928

CLAIM FILED LATE 05/03/82 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL FEDERAL AND INDIAN RESERVED WATER RIGHTS.

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.87 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 102.00

Source Name: CARELESS 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		NESESE	8	8N	18E	WHEATLAND

Period of Diversion: MARCH 1 TO JULY 1

Diversion Means: HEADGATE

Ditch Name: HOLMES AND PIRRIE FLOOD DITCH

Period of Use: MARCH 1 TO JULY 1

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	85.00		NE	17	8N	18E	WHEATLAND
2	17.00		N2NESE	17	8N	18E	WHEATLAND

Total: 102.00