

Montana Water Court
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ELECTRONICALLY FILED

40A-0318-R-2021

September 16, 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: Dorothy W. Stevens Revocable Trust

CASE 40A-0318-R-2021

40A 198466-00

40A 198467-00

40A 198476-00

40A 198486-00

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. The following claims were decreed with DNRC issue remarks:

Claim 40A 198466-00:

MEANS OF DIVERSION AND RESERVOIR RECORD WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

Claim 40A 198467-00:

MEANS OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

Claim 40A 198476-00:

MEANS OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON AGNES CREEK WITH A PRIORITY DATE PREDATING CASE NO. 374 , SWEET GRASS COUNTY.

Claim 40A 198486-00:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON AMERICAN FORK WITH A PRIORITY DATE PREDATING CASE NO. 374 , SWEET GRASS COUNTY.

2. No objections or notices or intent to appear were filed.

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. With respect to the priority date of the claims in this Case, the only evidence before the Court is the existence of Case No. 374 and the resulting issue remark that appeared on claims 40A 198476-00 and 40A 198486-00. While historical decrees provide some evidence of existing water rights on a given source, they are not conclusive. Decrees were often the result of a specific controversy between water users;

thus, rights were adjudicated on a piecemeal basis by the district courts. Further, decrees were usually limited in scope, and often multiple decrees were issued on the same stream. *See* Albert Stone, *Are There Any Adjudicated Streams in Montana?* 19 Mont. L. Rev. 19 (1957).

In short, there are numerous reasons why the claims in this Case may not have appeared in the District Court decree, but objectors bear the burden of establishing that the priority date should be something other than what was claimed. In this Case, the prima facie proof of priority date has not been overcome.

3. The means of diversion issue remarks appearing on claims 40A 198466-00, 40A 198467-00, and 40A 198476-00 are notice-type issue remarks. As no objections were filed, no further proceedings are required.

RECOMMENDATION

1. The issue remarks should be removed from the claims with no changes to the elements of the claims.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended changes have been made in the state's centralized record system.

Anika M. Stern
Senior Water Master

Service via USPS Mail:

Dorothy W. Stevens
Revocable Trust
PO Box 265
Two Dot, MT 59085-0265

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

Water Right Number: 40A 198466-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: STEVENS, DOROTHY W REVOCABLE TRUST
PO BOX 265
TWO DOT, MT 59085 0265

Priority Date: JANUARY 1, 1935

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

RUNOFF

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: UNNAMED TRIBUTARY OF SPRING 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		NWSWNW	4	5N	13E	SWEET GRASS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSWNW	4	5N	13E	SWEET GRASS

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 0.10 ACRES

Capacity: 0.32 ACRE-FEET

THE CAPACITY, DAM HEIGHT, MAXIMUM DEPTH, AND SURFACE AREA HAVE BEEN ESTIMATED BY DNRC.

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

SWNW 4 5N 13E SWEET GRASS

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

Water Right Number: 40A 198467-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: STEVENS, DOROTHY W REVOCABLE TRUST
PO BOX 265
TWO DOT, MT 59085 0265

Priority Date: JANUARY 1, 1935

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

RUNOFF

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: UNNAMED TRIBUTARY OF FISH 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		NENWNW	8	5N	13E	SWEET GRASS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENWNW	8	5N	13E	SWEET GRASS

Diversion to Reservoir: DIVERSION # 1

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			NWNW	8	5N	13E	SWEET GRASS

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

Water Right Number: 40A 198476-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: STEVENS, DOROTHY W REVOCABLE TRUST
PO BOX 265
TWO DOT, MT 59085 0265

Priority Date: DECEMBER 31, 1906

Type of Historical Right: USE

Purpose (Use): DOMESTIC

***Flow Rate:** 150.00 GPM

Volume: 10.00 AC-FT

Households: 4

Maximum Acres: 3.00

Source Name: AGNES 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		NESWSW	32	6N	13E	WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

MEANS OF DIVERSION INCLUDES A PUMP AND DITCH.

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESWSW	32	6N	13E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

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	3.00		NENWSW	32	6N	13E	WHEATLAND
Total:	3.00						

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

Water Right Number: 40A 198486-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: STEVENS, DOROTHY W REVOCABLE TRUST
PO BOX 265
TWO DOT, MT 59085 0265

Priority Date: OCTOBER 24, 1903

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 37.50 CFS

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

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 863.50

***Source Name:** AMERICAN FORK

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		NWSWNE	28	6N	13E	WHEATLAND

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: NORTON AND LYONS DITCH

THIS RIGHT TO DIVERT WATER THROUGH THE NORTON & LYONS DITCH IS SUBJECT TO THE AMERICAN FORK CREEK DECREE, CAUSE #374, SWEET GRASS CO.

THE DIVISION THROUGH NORTON & LYONS DITCH DOES AFFECT THE FLOW IN THE MAIN STREAM OF THE AMERICAN FORK CREEK AFTER AUGUST 1 OF EACH YEAR.

WATER IS DIVERTED FROM AMERICAN FORK CREEK AND DITCHED NORTHEAST ABOUT 1.5 MILES TO LEBO CREEK. LEBO CREEK IS USED AS A NATURAL CARRIER FOR ABOUT 1/4 MILE TO AN UNNAMED TRIBUTARY OF BIG ELK CREEK AND FROM THERE TO LEBO CREEK. FROM LEBO LAKE, VARIOUS DITCHES AND NATURAL WATER COURSES, INCLUDING LEBO CREEK, DELIVER THE WATER TO THE PLACES OF USE.

Reservoir: OFFSTREAM **Reservoir Name:** LEBO LAKE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NW	6	6N	14E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

LEBO RESERVOIR CONSISTS OF TWO DAMS LOCATED IN GOVERNMENT LOT 4 NW SEC 06 TWP 06N RGE 14E AND NWNWSW SEC 31 TWP 07N RGE 14E

WHEATLAND COUNTY.

THE SURFACE AREA OF LEBO RESERVOIR IS LOCATED: NE SEC 1 TWP 6N RGE 13E NW SEC 6 TWP 6N RGE 14E SE SEC 36 TWP 7N RGE 13E SW SEC 31 TWP 7N RGE 14E

Period of Use: MARCH 1 TO NOVEMBER 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	360.00		W2	2	6N	14E	WHEATLAND
2	244.00		E2	3	6N	14E	WHEATLAND
3	42.00		N2N2	4	6N	14E	WHEATLAND
4	12.00		NE	5	6N	14E	WHEATLAND
5	37.00		S2S2	33	7N	14E	WHEATLAND
6	65.00		S2S2	34	7N	14E	WHEATLAND
7	8.00		SENE	35	7N	14E	WHEATLAND
8	95.50		S2	35	7N	14E	WHEATLAND
Total:	<u>863.50</u>						

Remarks:

PLACE OF USE PARCEL NO. 004 IS IN GOVERNMENT LOTS 1 AND 8. PLACE OF USE PARCEL NO. 003 IS IN GOVERNMENT LOTS 2, 3, 4, 5, AND 6.

SPLIT CLAIM NO. 40A 30064419 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.