

Montana Water Court

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

* * * * *

CLAIMANT: TG Ranchland LLC

OBJECTORS: TG Ranchland LLC

ON MOTION OF THE MONTANA WATER COURT

CASE 40A-0450-R-2021

40A 207534-00

40A 30109955

40A 30109957

40A 30109960

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 Claims 40A 207534-00, 40A 30109955, 40A 30109957, and 40A 30109960 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). The claims received objections filed by Claimant TG Ranchland LLC.

The Court consolidated these claims into Water Court Case 40A-0450-R-2021 on May 20, 2021. The consolidation order set a filing deadline by which Claimant was to file responsive information resolving its self-objections.

Claimant filed a response on July 19, 2021. Claimant filed a supplemental document on August 2, 2021.

FINDINGS OF FACT

1. Claimant objected to the period of diversion and period of use of Claim 40A 207534-00.
2. Claimant objected to the flow rate and volume of Claims 40A 30109955 and 40A 30109957.
3. Claimant objected to all elements of Claim 40A 30109960.
4. A DNRC memorandum regarding certain elements exists in the claim file for Claims 40A 30109955, 40A 30109957, 40A 30109960. The DNRC filed this memorandum with the Court on July 26, 2017. The memorandum states that several exempt claims were erroneously included in the Preliminary Decree without a complete examination. The DNRC suggests through this memorandum that certain changes be made to these claims.
6. Claimant's July 19, 2021 filing includes a brief, several motions to amend, and an aerial image.
7. Claimant states that the periods of use and diversion of Claim 40A 207534-00 have historically been April 20 to October 10. Claimant states that this period of diversion matches all other irrigation claims of TG Ranchland LLC.
8. A Verified Motion to Amend Claim 40A 207534-00 is attached to the brief. This document is signed by David A. Voldseth. Mr. Voldseth is a managing member of Claimant TG Ranchland LLC.

9. In this motion to amend Claim 40A 207534-00, Mr. Voldseth states that the periods of use and diversion should be April 20 to October 10.

10. The period of use and period of diversion for Claim 40A 207534-00 should be April 20 to October 10.

11. Claimant states in its brief that it agrees to a priority date of January 9, 2017 for Claims 40A 30109955, 40A 30109957, 40A 30109960. This matches the date Claimant submitted Exempt Claim Forms with the DNRC.

12. Claimant requests the Court add a volume information remark to Claims 40A 30109955, 40A 30109957, 40A 30109960 pursuant to Rule 24(c), W.R.C.E.R. Claimant requests the Court add the following information remark to these claims:

THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. THE ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

13. The information remark described above should be added to Claims 40A 30109955, 40A 30109957, 40A 30109960.

14. Claimant states that the point of diversion and place of use for Claim 40A 30109960 is SENWSW of Section 36, T8N, R9E. Claimant included a marked up modern aerial image to support its objection to the point of diversion and place of use of this claim.

15. Claimant's Verified Motion to Amend Claim 40A 30109960 filed August 2, 2021 is signed by David A. Voldseth. Mr. Voldseth is a managing member of Claimant TG Ranchland LLC. The motion states that the correct point of diversion and place of use of Claim 40A 30109960 is SENWSW of Section 36, T8N, R9E, Meagher County.

16. The point of diversion and place of use should be SENWSW of Section 36, T8N, R9E, Meagher County.

17. The information remark regarding periods of diversion should be removed.

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 has the authority to hear all objections to the elements of any claim included in a Court issued Temporary Preliminary Decree or Preliminary Decree. Section 85-2-233, MCA.

3. A volume for stock water claims will not be quantified except as directed by the Water Court. When a volume is not quantified, the following remark shall be added to the water right abstract:

THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. THE ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Rule 24(c), W.R.C.E.R.

CONCLUSIONS OF LAW

1. The changes described in the findings of fact may be made because the evidence in the record overcomes the prima facie status of each relevant claim by a preponderance of the evidence.

2. The volume information remark described in the Findings of Fact should be added to Claims 40A 30109955, 40A 30109957, 40A 30109960 because those claims are for livestock direct from source and the mentioned remark is appropriate for such claims.

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. Post-decree Abstracts of Water Right Claims are served with this Report to confirm the recommended changes have been made in the state’s centralized record system.

Colton J. Lauer
Water Master

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

Water Right Number: **40A 207534-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: TG RANCLAND LLC
 143 VOLDSETH ROAD
 MARTINSDALE, MT 59053 8732

Priority Date: APRIL 10, 1885

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 1.00 CFS

UNDIVIDED INTEREST IN 400 MINER'S INCHES.

***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: 21.20

Source Name: MUSSELSHELL RIVER, SOUTH 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		SWSESW	30	8N	10E	MEAGHER

Period of Diversion: APRIL 20 TO OCTOBER 10

Diversion Means: HEADGATE

Ditch Name: JACKSON DITCH

Period of Use: APRIL 20 TO OCTOBER 10

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	21.20		S2S2SE	30	8N	10E	MEAGHER

Total: 21.20

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

Water Right Number: **40A 30109955** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: TG RANCLAND LLC
 143 VOLDSETH ROAD
 MARTINSDALE, MT 59053 8732

Priority Date: JANUARY 9, 2017

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 35.00 GPM

Volume: THIS WATER 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 MUSSELSHELL RIVER, SOUTH 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		NESESE	4	7N	10E	MEAGHER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DEVELOPED SPRING

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			NESESE	4	7N	10E	MEAGHER

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

Water Right Number: 40A 30109957 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: TG RANCLAND LLC
143 VOLDSETH ROAD
MARTINSDALE, MT 59053 8732

Priority Date: JANUARY 9, 2017

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 35.00 GPM

Volume: THIS WATER 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 MUSSELSHELL RIVER, SOUTH 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>Tw</u>	<u>Rge</u>	<u>County</u>
1		NENWNW	9	7N	10E	MEAGHER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DEVELOPED SPRING

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>Tw</u>	<u>Rge</u>	<u>County</u>
1			NENWNW	9	7N	10E	MEAGHER

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

Water Right Number: **40A 30109960** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: TG RANCLAND LLC
 143 VOLDSETH ROAD
 MARTINSDALE, MT 59053 8732

Priority Date: JANUARY 9, 2017

Type of Historical Right: USE

Purpose (Use): STOCK

Flow Rate: 35.00 GPM

Volume: THIS WATER 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 MUSSELSHELL RIVER, SOUTH 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		SENWSW	36	8N	9E	MEAGHER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DEVELOPED SPRING

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			SENWSW	36	8N	9E	MEAGHER