

40A-0471-R-2021

September 15, 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: Gerald A Zieg

NOTICE OF INTENT TO APPEAR: Gerald A Zieg

CASE 40A-471-R-2021

40A 203404-00
40A 203409-00
40A 203410-00
40A 203411-00
40A 203412-00
40A 203415-00
40A 205292-00

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. Gerald A. Zieg claims 40A 203404-00, 40A 203409-00, 40A 203410-00, 40A 203411-00, 40A 203412-00, 40A 203415-00, and 40A 205292-00 were decreed with DNRC issue remarks:

40A 203404-00, 40A 203410-00, 40A 203411-00, and 40A 205292-00:

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.

40A 203409-00:

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 POINT OF DIVERSION, RESERVOIR RECORD, AND PLACE OF USE ARE IN QUESTION. THERE DOES NOT APPEAR TO BE A RESERVOIR AT THE CLAIMED LOCATION.

40A 203412-00:

POINT 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.

40A 203415-00:

THE LEGAL LAND DESCRIPTIONS OF POINT OF DIVERSION NOS. 1, 2, AND 4 MAY BE INCORRECT. THE LOCATION OF THE HEADGATES CANNOT BE IDENTIFIED FROM AVAILABLE DATA SOURCES.

2. Claimant Gerald A. Zieg filed Notices of Intent to Appear for claims 40A 203404-00, 40A 203409-00, 40A 203410-00, 40A 203411-00, 40A 203412-00, and 40A 203415-00.

3. Except for claim 40A 203415-00, the claims in this Case were decreed with issue remarks that provided notification of DNRC changes made after completion of the Temporary Preliminary Decree proceedings and prior to issuance of the Preliminary Decree. The remarks indicated that if no objections were filed, the remarks would be removed, and the elements would remain as decreed. No objections were filed, and no further proceedings are required to address the notice-type issue remarks.

4. An Order Setting Filing Deadline was issued for Gerald A. Zieg to file documentation addressing the issue remarks appearing on claims 40A 203409-00 and 40A 203415-00 and the filed Notices of Intent to Appear.

5. On August 30, 2021, counsel for Gerald A. Zieg filed a Response to Issue Remarks. A copy is attached.

Claim 40A 203409-00:

6. The August 30, 2021 filing explains Gerald A. Zieg visited the reservoir in the SESENE, Section 29, Township 10 North, Range 11 East, Meagher County, on August 12-14, 2021. The reservoir is in a narrow coulee with enough timber to effectively conceal it from view on air photos.

Claim 40A 203415-00:

7. The August 30, 2021 filing explains Gerald A. Zieg visited the locations of the subject diversions on August 12-14, 2021. The points of diversion are generally accurate although not clearly visible on aerial photographs

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-233, -247, -248, MCA.

2. The means of diversion and point of diversion issue remarks appearing on claims 40A 203404-00, 40A 203409-00, 40A 203410-00, 40A 203411-00, 40A 203412-00, and 40A 205292-00 are notice-type issue remarks. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. The August 30, 2021 filing states no additional proceedings are necessary beyond Claimant's field verification. As such, Gerald A. Zieg's Notices of Intent to Appear should be dismissed.

2. The issue remarks should be removed from the claims in this Case 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 DNRC's water rights database.

Anika M. Stern
Senior Water Master

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

Water Right Number: **40A 203404-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GERALD A ZIEG
PO BOX 431
WHITE SULPHUR SPRINGS, MT 59645 0431

Priority Date: NOVEMBER 1, 1912

Type of Historical Right: FILED

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.

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: PICNIC CANYON
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Otr Sec	Sec	Twp	Rge	County
1		SWSESE	20	10N	11E	MEAGHER

Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DAM
Reservoir: ONSTREAM

Govt Lot	Otr Sec	Sec	Twp	Rge	County
	SWSESE	20	10N	11E	MEAGHER

Diversion to Reservoir: DIVERSION # 1

Period of Use: APRIL 1 TO DECEMBER 31
Place of Use:

ID	Acres	Govt Lot	Otr Sec	Sec	Twp	Rge	County
1			SWSESE	20	10N	11E	MEAGHER

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

Water Right Number: **40A 203409-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GERALD A ZIEG
PO BOX 431
WHITE SULPHUR SPRINGS, MT 59645 0431

Priority Date: NOVEMBER 10, 1919

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.

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 MUD CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	SESENE	29	10N	11E	MEAGHER	

Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DAM
Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
SESENE	29	10N	11E	MEAGHER	

Diversion to Reservoir: DIVERSION # 1

Period of Use: APRIL 1 TO DECEMBER 1
Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESENE	29	10N	11E	MEAGHER	

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

Water Right Number: **40A 203410-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GERALD A ZIEG
PO BOX 431
WHITE SULPHUR SPRINGS, MT 59645 0431

Priority Date: NOVEMBER 10, 1919

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.

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 MUD CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNE	29	10N	11E	MEAGHER

Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DAM
Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESWNE	29	10N	11E	MEAGHER

Diversion to Reservoir: DIVERSION # 1

Period of Use: APRIL 1 TO DECEMBER 1
Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NESWNE	29	10N	11E	MEAGHER

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

Water Right Number: **40A 203411-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GERALD A ZIEG
PO BOX 431
WHITE SULPHUR SPRINGS, MT 59645 0431

Priority Date: DECEMBER 16, 1931

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.

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 MUD CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESENW	29	10N	11E	MEAGHER

Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DAM
Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESENW	29	10N	11E	MEAGHER

Diversion to Reservoir: DIVERSION # 1

Period of Use: APRIL 1 TO DECEMBER 1
Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESENW	29	10N	11E	MEAGHER

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

Water Right Number: **40A 203412-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GERALD A ZIEG
PO BOX 431
WHITE SULPHUR SPRINGS, MT 59645 0431

Priority Date: SEPTEMBER 6, 1904

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 341.09 GPM

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

Climatic Area: 5 - LOW

Maximum Acres: 20.00

Source Name: CAMERON CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWNWNE	20	10N	11E	MEAGHER
Period of Diversion:	APRIL 1 TO SEPTEMBER 1					
Diversion Means:	HEADGATE					
2 - SECONDARY		NENWNW	28	10N	11E	MEAGHER
Period of Diversion:	APRIL 1 TO SEPTEMBER 1					
Diversion Means:	DITCH					
3 - SECONDARY		NENWNW	28	10N	11E	MEAGHER
Period of Diversion:	APRIL 1 TO SEPTEMBER 1					
Diversion Means:	DITCH					

THE SECONDARY DIVERSIONS ARE TWO DITCHES THAT CONVEY WATER TO EITHER SIDE OF PICNIC CANYON.

WATER DIVERTED FROM CAMERON CREEK IS CONVEYED TO AN UNNAMED TRIBUTARY OF PICNIC CANYON THEN TO PICNIC CANYON. BOTH ARE USED AS NATURAL CARRIERS TO SECONDARY POINTS OF DIVERSION, DIVERSION NOS. 2 AND 3. BOTH SECONDARY DIVERSIONS ARE LOCATED ON PICNIC CANYON WHICH IS A TRIBUTARY OF MUD CREEK.

Period of Use: APRIL 1 TO SEPTEMBER 1

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
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1	20.00	NW	28	10N	11E	MEAGHER
Total:	20.00					

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.

203412-00 203413-00 203415-00

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

Water Right Number: **40A 203415-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GERALD A ZIEG
PO BOX 431
WHITE SULPHUR SPRINGS, MT 59645 0431

Priority Date: AUGUST 24, 1899

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.59 CFS

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

Climatic Area: 5 - LOW

Maximum Acres: 42.00

Source Name: MUD CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County	
1		SWSESW	21	10N	11E	MEAGHER	
Period of Diversion:	APRIL 1 TO SEPTEMBER 30						
Diversion Means:	HEADGATE						
2		NENENW	28	10N	11E	MEAGHER	
Period of Diversion:	APRIL 1 TO SEPTEMBER 30						
Diversion Means:	HEADGATE						
3		NWNENW	28	10N	11E	MEAGHER	
Period of Diversion:	APRIL 1 TO SEPTEMBER 30						
Diversion Means:	HEADGATE						
4		SENENW	28	10N	11E	MEAGHER	
Period of Diversion:	APRIL 1 TO SEPTEMBER 30						
Diversion Means:	HEADGATE						
Period of Use:	APRIL 1 TO SEPTEMBER 30						
Place of Use:							
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	42.00		NW	28	10N	11E	MEAGHER
Total:	42.00						

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.

203412-00 203413-00 203415-00

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.

203403-00 203415-00

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

Water Right Number: **40A 205292-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GERALD A ZIEG
PO BOX 431
WHITE SULPHUR SPRINGS, MT 59645 0431

Priority Date: DECEMBER 31, 1960

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.

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 PICNIC CANYON
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWSW	21	10N	11E	MEAGHER

Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: DAM
Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SESWSW	21	10N	11E	MEAGHER

Diversion to Reservoir: DIVERSION # 1

Period of Use: MARCH 1 TO NOVEMBER 30
Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESWSW	21	10N	11E	MEAGHER