

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

\* \* \* \* \*

CLAIMANT: J. William Lea

CASE 40A-0225-R-2022  
40A 109281-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the 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**

Claim 40A 109281-00 appeared in the Preliminary Decree for the Musselshell River above Roundup (Basin 40A) issued on June 7, 2017. The claim is owned by J William Lea. The claim did not receive objections, counterobjections, or notices of intent to appear but did receive an issue remark during the DNRC's claims reexamination. Issue remarks are notations identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

## FINDINGS OF FACT

1. Claim 40A 109281-00 appeared in the Basin 40A Preliminary Decree as a claim for flood irrigation that diverts water from Blake Creek via a headgate in the SWSESE of Section 19, T10N, R17E, Wheatland County.

2. The claim received the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

3. Based on the map attached to the Statement of Claim, the headgate is in the SESESE of Section 19, T10N, R17E not the SWSESE of Section 19, T10N, R17E.

4. On April 21, 2022, the Court ordered Claimant J William Lea to file a statement by May 13, 2022, confirming the historically accurate location of the headgate claimed by claim 40A 109281-00. Nothing was filed by the deadline.

5. On May 17, 2022, the Court ordered Claimant J William Lea to show cause why the point of diversion should not be modified to the SESESE of Section 19, T10N, R17E. The Order stated that if nothing was filed by the deadline, the point of diversion would be modified to the SESESE of Section 19, T10N, R17E. Nothing was filed by the deadline.

## PRINCIPLES 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; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. 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.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

#### CONCLUSION OF LAW

1. The point of diversion issue remark overcomes the prima facie status of claim 40A 109281-00. The evidence in the claim file shows the headgate was historically located in the SESESE of Section 19, T10N, R17E. The point of diversion should be modified accordingly. This modification resolves the point of diversion issue remark, and the remark should be removed from the claim abstract.

#### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusion of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

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Melissa Lockman  
Senior Water Master

#### **Service via USPS Mail:**

J. William Lea  
PO Box 162  
Hobson, MT 59452

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

**Water Right Number:** 40A 109281-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** J WILLIAM LEA  
PO BOX 162  
HOBSON, MT 59452 0162

**Priority Date:** JUNE 15, 1912

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 4.00 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:** 120.00

**Source Name** BLAKE 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		SESESE	19	10N	17E	WHEATLAND

**Period of Diversion:** MARCH 20 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Period of Use:** MARCH 20 TO OCTOBER 15

**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	5.00		NWNENE	30	10N	17E	WHEATLAND
2	35.00		NWNE	30	10N	17E	WHEATLAND
3	25.00		SWNE	30	10N	17E	WHEATLAND
4	20.00		NENW	30	10N	17E	WHEATLAND
5	35.00		SENW	30	10N	17E	WHEATLAND
<b>Total:</b>	<u>120.00</u>						