

40A-0259-R-2021

July 7, 2022

Montana Water Court

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

* * * * *

CLAIMANTS: **Rebecca H Gibbs**; Mesa Pate; Hollie L Bruner; Tim J Bruner; Rocking CB Ranch LLC; Golden Valley Colony; Lynn Webber; ~~Frederick S Coughill Jr~~; David H Bruner; Gordon R Bruner; Patti L Bruner; Susan L Bruner; Billie Louise Zeier Trust; Lewis William Zeier Trust; Jess H Garfield; Alan S Homer; Marilyn Homer; Alexandra V Spizziri; John A Spizziri Sr.

CASE 40A-0259-R-2021

40A 109952-00	40A 197890-00
40A 117445-00	40A 197964-00
40A 117464-00	40A 198165-00
40A 128573-00	40A 198287-00
40A 130890-00	40A 203568-00
40A 146673-00	40A 30103837

OBJECTOR: Rocking CB Ranch, LLC

ON MOTION OF THE WATER COURT

NOTICE OF FILING OF SECOND MASTER'S REPORT

This Second 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 Second Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Second 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 Second Master's Report.

SECOND MASTER'S REPORT

BACKGROUND

A Master's Report was issued in this Case on March 21, 2022. On March 23, 2022, counsel for Claimant and Objector Rocking CB Ranch, LLC ("Rocking CB") objected to the Master's Report requesting a deadline be set to address its self-Objections. The Case was recommitted to the Water Master for the purpose of allowing Rocking CB to address the self-Objections. A deadline was set for Rocking CB to file documentation resolving the self-Objections. On May 5, 2022, Rocking CB filed its Motion for Implied Claim or Incidental Use Remark. The May 5, 2022 filing indicated that granting the requested implied claim resolves Rocking CB's self-objections.

This Second Master's Report is similar to the March 21, 2022 Master's Report in many aspects, but it recommends the creation of an implied claim, resolving Rocking CB's self-Objection. This Second Master's Report supersedes the March 21, 2022 Master's Report.

FINDINGS OF FACT

1. Claims 40A 109952-00, 40A 117445-00, 40A 117464-00, 40A 128573-00, 40A 130890-00, 40A 146673-00, 40A 197890-00, 40A 197964-00, 40A 198165-00, 40A 198287-00, 40A 203568-00, and 40A 30103837 were decreed with an over-filed notice of appropriation issue remark. The remark indicates the claims are based on the June 6, 1926 JB Gregg and Ida Landice filed Notice of Appropriation for 1,000.00 miner's inches (25.00 cubic feet per second (cfs)) from the Mussellshell River.

2. Claims 40A 109952-00, 40A 117445-00, 40A 117464-00, 40A 128573-00, 40A 130890-00, 40A 146673-00, 40A 197890-00, 40A 198165-00, 40A 198287-00, and 40A 203568-00 were decreed with the following priority date issue remark:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON MUSSELSHELL RIVER WITH A PRIORITY DATE PREDATING CASE NO. 1148, GOLDEN VALLEY COUNTY.

3. Claims 40A 117445-00, 40A 117464-00, 40A 128573-00, 40A 197890-00, 40A 197964-00, 40A 198165-00, 40A 198287-00, and 40A 203568-00 were decreed with DNRC notice-type issue remarks.

4. Claim 40A 30103837 was also decreed with the following issue remark that must be addressed:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. SIMMS DITCH IS LOCATED IN THE NENWSE SEC 2 TWP 6N RGE 19E GOLDEN VALLEY CO.

5. Claim 40A 30103837 was also called in on motion of the Court as the wrong version of the abstract was included in the Preliminary Decree, no further action is required as to the on-motion issue.

6. Additionally, Rocking CB objected to claims 40A 117445-00 and 40A 117464-00, both of which it owns.

7. A deadline was set for the parties to address the issue remarks and Rocking CB Ranch's Objections. The Orders in this Case have included the following language:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

8. On September 2, 2021, counsel for Alexandra V. Spizziri and John A. Spizziri Sr. filed documentation addressing the issues in this Case. Regarding the point of diversion issue remark decreed on claim 40A 3010387, the filing stated in part:

The Spizziri's agree that the point of diversion be changed from SENWSE of Section 2 6N 19E to NENWSE Section 2 6N19E. Having reviewed the file and specifically the memo from Ed Dobson to Craig Dubois on 9/12/91 wherein it is described as this being a correction section, and having further reviewed this matter with Matt, water resource specialist with DNRC, we agree that there are more accurate ways to plot the location of the point of diversion than there were in 1895. However, we would request a remark be added to the water right claim to the effect This claim was originally described with the point of diversion being in the SENWSE of Section 2 6N 19E and is further described as such in the Water Resource Survey for Golden Valley County Montana. The change of the point of diversion came about because this was a correction section and DNRC has determined that the newly described point of diversion is a more accurate depiction of what is actually on the ground."

The September 2, 2021 filing also discusses the overclaimed appropriation at issue in this Case, noting that the appropriation accounts for surplus waters.

9. On February 18, 2022, counsel for Rocking CB and Jess Garfield filed a Motion for resolution of the overfiled notice of appropriation issue remark decreed on the claims in this case. Rocking CB and Garfield explain they agree with the Spizziri's September 2, 2021 filing asserting that the Landice Notice of Appropriation was for 25.00 cfs *and* surplus water; the 1.54 cfs claimed over 25.00 cfs reflects the additional surplus water claimed pursuant to the Landice Notice of Appropriation.

The February 18, 2022 filing did not specifically address the status of Rocking CB's Objections.

10. A Master's Report was issued on March 21, 2022. Rocking CB objected to the Master's Report, and it was recommitted to this Master. A deadline was set for Rocking CB to file documentation resolving the self-Objections.

11. On April 15, 2022, the DNRC updated the ownership of claim 40A 197890-00 to reflect that Rebecca H. Gibbs is the new owner of the claim. The caption and service list for this Second Master's Report has been updated, consistent with the DNRC database.

12. On May 5, 2022, Rocking CB filed its Motion for Implied Claim or Incidental Use Remark. The Motion requested the Water Court create an implied claim for stock use from irrigation claims 40A 117445-00 and 40A 117464-00, or alternatively, add an incidental use remark denoting stock use.

13. Rocking CB supported the proposed implied claim by noting the Notice of Appropriation for claims 40A 117445-00 and 40A 117464-00 indicates the water is for "irrigation, domestic, and other purposes":

Claims 1000 miners' inches of the waters of Musselshell River, and its tributaries in said County and State, for irrigation, domestic and other purposes; place of intended use is to irrigate for agricultural purposes, Lots 9,10,11,12 and 13 of Block 1; Lots 7 and 8 of Block 2 of Farm Addition to Ryegate, Montana and

Rocking CB indicates that stock use is included in "other purposes." Rocking CB also attached the Affidavit of Leonard Schladweiler, who lives on a property neighboring Rocking CB Ranch. Schladweiler is 93 years old and states: "I have a clear recollection of there being stock that watered from ditches on the [Rocking CB] property at various times throughout my life."

CONCLUSIONS OF LAW

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

2. 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.

3. An implied claim is “a claim authorized by the water court to be separated and individually identified when a statement of claim includes multiple rights.” Rule 2(a)(33) W.R.C.E.R. Where the DNRC does not identify the implied claim during claim examination and the claimant requests an implied claim, the Water Court applies a three-prong test to determine whether an implied claim is warranted. Water Court Case 76HF-580, *Order Amending and Adopting* at 20 (Jan. 31, 2013):

First, the implied claim must be justified by some evidence in the claim form or the documents attached thereto, although supplemental evidence can be used to explain or clarify the claim and its contents. Second, evidence must exist of actual historic use corroborating the implied claim. Third, the creation of the implied claim should not result in a change to historic water use or increase the historic burden to other water users. The burden to meet these criteria rests on the person seeking recognition of the implied claim.

It is appropriate to generate implied stock claim 40A 30105300 from parent claims 40A 117445-00 and 40A 117464-00.

4. The priority date issue remark decreed on claims 40A 109952-00, 40A 117445-00, 40A 117464-00, 40A 128573-00, 40A 130890-00, 40A 146673-00, 40A 197890-00, 40A 198165-00, 40A 198287-00, and 40A 203568-00 indicated that the claims were not included in Case No. 2248, Golden Valley County. The record does not indicate why the claims were not included in the Case. The only Objections to claims 40A 109952-00, 40A 117445-00, 40A 117464-00, 40A 128573-00, 40A 130890-00, 40A 146673-00, 40A 197890-00, 40A 198165-00, 40A 198287-00, and 40A 203568-00 will

be dismissed (see Recommendation No. 1). The lack of interested objections or notices of intent to appear indicates no interested water users take issue with the priority dates that were decreed on the claims. The priority date issue remark is not supported by evidence sufficient to overcome the prima facie proof afforded the priority dates for the claims. The issue remark has provided notice to claimants and other water users, and the remark can be removed from claims 40A 109952-00, 40A 117445-00, 40A 117464-00, 40A 128573-00, 40A 130890-00, 40A 146673-00, 40A 197890-00, 40A 198165-00, 40A 198287-00, and 40A 203568-00.

5. The point of diversion issue remark decreed on claims 40A 117445-00, 40A 117464-00, 40A 128573-00, 40A 197890-00, 40A 197964-00, 40A 198165-00, 40A 198287-00, and 40A 203568-00 is a notice-type issue remark. The only objections filed in this Case were to claims 40A 117445-00 and 40A 117464-00 and those Objections have been resolved with the generation of implied claim 40A 30105300. No further proceedings are required.

RECOMMENDATIONS

1. Implied claim 40A 30105300 should be generated, representing the stock use described on Statements of Claims 40A 117445-00 and 40A 117464-00. A Post Decree Abstract for claim 40A 30105300 is attached to this Report.

2. The point of diversion of claim 40A 30103837 should be modified as follows:

<u>ID</u> 1	<u>Govt Lot</u> NENWSE	<u>Qtr Sec</u> SENWSE	<u>Sec</u> 2	<u>Twp</u> 6N	<u>Rge</u> 19E	<u>County</u> GOLDEN VALLEY
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And the following information remark should be added, as requested by the Claimant:

THIS CLAIM WAS ORIGINALLY DESCRIBED WITH THE POINT OF DIVERSION BEING IN THE SENWSE OF SECTION 2, 6N, R19E, GOLDEN COUNTY. THE POINT OF DIVERSION LEGAL LAND DESCRIPTION CHANGE CAME ABOUT BECAUSE THIS IS A CORRECTION SECTION AND DNRC DETERMINED THE NEWLY DESCRIBED POINT OF DIVERSION LEGAL LAND DESCRIPTION MORE ACCURATELY DESCRIBES WHAT IS ACTUALLY ON THE GROUND.

3. The issue remarks should be removed from the claims in this Case.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

Anika M. Stern
Senior Water Master

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Note: Caption and Service List
Updated: 5/25/2022

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

Water Right Number: 40A 109952-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: TIM J BRUNER
PO BOX 116
RYEGATE, MT 59074 0116

HOLLIE L BRUNER
PO BOX 116
RYEGATE, MT 59074 0116

Priority Date: JUNE 1, 1926

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 3.15 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: 83.00

Source Name: MUSSELSHELL RIVER

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		NENWSE	2	6N	19E	GOLDEN VALLEY

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: SIMMS DITCH

Period of Use: APRIL 15 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	83.00		N2S2	1	6N	19E	GOLDEN VALLEY

Total: 83.00

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

Water Right Number: 40A 117445-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ROCKING CB RANCH LLC
% MCKNIGHT, CLAIRE S
51 DEEP CREEK BENCH RD
LIVINGSTON, MT 59047 9112

Priority Date: JUNE 1, 1926
Type of Historical Right: FILED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
***Flow Rate:** 4.92 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:** 130.00
Source Name: MUSSELSHELL RIVER
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		NENWSE	2	6N	19E	GOLDEN VALLEY
Period of Diversion:	APRIL 1 TO OCTOBER 15					
Diversion Means:	HEADGATE					
Ditch Name:	SIMMS DITCH					
Period of Use:	APRIL 1 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	127.00		SE	4	6N	20E	GOLDEN VALLEY
2	3.00	16		4	6N	20E	GOLDEN VALLEY
Total:	130.00						

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.

117445-00

117446-00

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.

117445-00 117464-00 30153500

IMPLIED CLAIM NO. 40A 30153500 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

Water Right Number: 40A 117464-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ROCKING CB RANCH LLC
% MCKNIGHT, CLAIRE S
51 DEEP CREEK BENCH RD
LIVINGSTON, MT 59047 9112

Priority Date: JUNE 1, 1926

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 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: 33.00

Source Name: MUSSELSHELL RIVER

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		NENWSE	2	6N	19E	GOLDEN VALLEY	
Period of Diversion:		APRIL 1 TO OCTOBER 15					
Diversion Means:		HEADGATE					
Ditch Name:		SIMMS DITCH					
Period of Use:		APRIL 1 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	33.00		E2SW	4	6N	20E	GOLDEN VALLEY
Total:		33.00					

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.

117464-00

117465-00

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.

117445-00 117464-00 30153500

IMPLIED CLAIM NO. 40A 30153500 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

Water Right Number: 40A 128573-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: GOLDEN VALLEY COLONY
100 GOLDEN VALLEY COLONY LN
RYEGATE, MT 59074 9704

Priority Date: JUNE 1, 1926

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.95 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: 158.00

Source Name: MUSSELSHELL RIVER

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		NENWSE	2	6N	19E	GOLDEN VALLEY

Period of Diversion: MAY 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: SIMMS DITCH

Period of Use: MAY 1 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	158.00		S2	6	6N	20E	GOLDEN VALLEY

Total: 158.00

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

Water Right Number: 40A 130890-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LYNN WEBBER
PO BOX 164
RYEGATE, MT 59074 0164

Priority Date: JUNE 1, 1926

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 67.32 GPM

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: 4.00

Source Name: MUSSELSHELL RIVER

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		NENWSE	2	6N	19E	GOLDEN VALLEY

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: HEADGATE W/DITCH OR PIPELINE/FLOOD AND DIKE

Subdivision: FARM ADDITION (RYEGATE)

Ditch Name: SIMMS DITCH

Period of Use: APRIL 1 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	1.00			5	6N	20E	GOLDEN VALLEY
Subdivision:		FARM ADDITION (RYEGATE)	TRACT/LOT: 001	BLOCK: 001			
2	1.00			5	6N	20E	GOLDEN VALLEY
Subdivision:		FARM ADDITION (RYEGATE)	TRACT/LOT: 004	BLOCK: 001			
3	1.00			5	6N	20E	GOLDEN VALLEY
Subdivision:		FARM ADDITION (RYEGATE)	TRACT/LOT: 003	BLOCK: 001			
4	1.00			5	6N	20E	GOLDEN VALLEY
Subdivision:		FARM ADDITION (RYEGATE)	TRACT/LOT: 002	BLOCK: 001			
Total:	4.00						

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

Water Right Number: 40A 146673-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MESA PATE
PO BOX 117
RYEGATE, MT 59074 0117

Priority Date: JUNE 1, 1926

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.52 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: 40.00

Source Name: MUSSELSHELL RIVER

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		NENWSE	2	6N	19E	GOLDEN VALLEY

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: SIMMS DITCH

Period of Use: APRIL 1 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	40.00		SE	5	6N	20E	GOLDEN VALLEY

Total: 40.00

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.

146672-00

146673-00

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

Water Right Number: 40A 197890-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: REBECCA H GIBBS
132 RED BRIDGE RD
HARLOWTON, MT 59036 5075

Priority Date: JUNE 1, 1926

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 417.38 GPM

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: 24.50

Source Name: MUSSELSHELL RIVER

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		NENWSE	2	6N	19E	GOLDEN VALLEY

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: SIMMS DITCH

Period of Use: APRIL 1 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	24.50		SW	5	6N	20E	GOLDEN VALLEY

Total: 24.50

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.

197889-00 197890-00

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

Water Right Number: 40A 197964-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners:

PATTI L BRUNER
PO BOX 156
RYEGATE, MT 59074

DAVID H BRUNER
PO BOX 156
RYEGATE, MT 59074

GORDON R BRUNER
421 LEWIS AVE
BILLINGS, MT 59101 5946

SUSAN L BRUNER
421 LEWIS AVE
BILLINGS, MT 59101 5946

Priority Date: JUNE 1, 1926

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: 3 - MODERATE

***Maximum Acres:** 42.00

Source Name: MUSSELSHELL RIVER

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		NENWSE	2	6N	19E	GOLDEN VALLEY

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

Ditch Name: SIMMS DITCH

Period of Use: MAY 1 TO SEPTEMBER 30

***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	15.00		N2N2SW	4	6N	20E	GOLDEN VALLEY
2	4.00	13	W2	4	6N	20E	GOLDEN VALLEY

3	23.00	NESE	5	6N	20E	GOLDEN VALLEY
Total:	42.00					

Remarks:

SPLIT CLAIM NO. 40A 30103837 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

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

Water Right Number: 40A 198165-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ZEIER, BILLIE LOUISE TRUST
PO BOX 76
RYEGATE, MT 59074 0076

ZEIER, LEWIS WILLIAM TRUST
% PO BOX 76
RYEGATE, MT 59074 0076

Priority Date: JUNE 1, 1926

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.97 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: 78.30

Source Name: MUSSELSHELL RIVER

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		NENWSE	2	6N	19E	GOLDEN VALLEY

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: SIMMS DITCH

Period of Use: APRIL 1 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	19.00	13		6	6N	20E	GOLDEN VALLEY
2	23.10	14		6	6N	20E	GOLDEN VALLEY
3	36.20	15		6	6N	20E	GOLDEN VALLEY

Total: 78.30

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

Water Right Number: 40A 198287-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: JESS H GARFIELD
PO BOX 115
RYEGATE, MT 59074 0115

Priority Date: JUNE 1, 1926

Type of Historical Right: FILED

Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 5.87 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:** 136.00

Source Name: MUSSELSHELL RIVER
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		NENWSE	2	6N	19E	GOLDEN VALLEY

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: SIMMS DITCH

Period of Use: APRIL 15 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	0.40	8	E2	3	6N	20E	GOLDEN VALLEY
2	2.50	9	E2	3	6N	20E	GOLDEN VALLEY
3	16.70	10	E2	3	6N	20E	GOLDEN VALLEY
4	1.40	15	E2	3	6N	20E	GOLDEN VALLEY
5	36.30		SW	3	6N	20E	GOLDEN VALLEY
6	2.70	11	W2	3	6N	20E	GOLDEN VALLEY
7	8.70	13	W2	3	6N	20E	GOLDEN VALLEY
8	14.20	14	W2	3	6N	20E	GOLDEN VALLEY
9	9.00	15	E2	4	6N	20E	GOLDEN VALLEY
10	12.60	16	E2	4	6N	20E	GOLDEN VALLEY
11	5.20		E2NESE	4	6N	20E	GOLDEN VALLEY
12	3.20		N2NWSE	4	6N	20E	GOLDEN VALLEY
13	8.60		N2N2SW	4	6N	20E	GOLDEN VALLEY

14	7.60	13	W2	4	6N	20E	GOLDEN VALLEY
15	6.90	14	W2	4	6N	20E	GOLDEN VALLEY
Total:	<u>136.00</u>						

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.

9156-00	15768-00	109114-00	198281-00	198283-00	198284-00
198285-00	198286-00	198287-00			

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

Water Right Number: 40A 203568-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ALAN S HOMER
PO BOX 43
RYEGATE, MT 59074

MARILYN HOMER
PO BOX 43
RYEGATE, MT 59074

Priority Date: JUNE 1, 1926

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 26.93 GPM

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: 1.54

Source Name: MUSSELSHELL RIVER

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		NENWSE	2	6N	19E	GOLDEN VALLEY

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: SIMMS DITCH

Period of Use: MAY 1 TO OCTOBER 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	1.54		SESENW	5	6N	20E	GOLDEN VALLEY

Total: 1.54

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

Water Right Number: 40A 30103837 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: JOHN A SPIZZIRI SR
PO BOX 50
RYEGATE, MT 59074 0050

ALEXANDRA V SPIZZIRI
PO BOX 50
RYEGATE, MT 59074 0050

Priority Date: JUNE 1, 1926

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 84.82 GPM

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: 5.00

Source Name: MUSSELSHELL RIVER

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		NENWSE	2	6N	19E	GOLDEN VALLEY

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

Ditch Name: SIMMS DITCH

THIS CLAIM WAS ORIGINALLY DESCRIBED WITH THE POINT OF DIVERSION BEING IN THE SENWSE OF SECTION 2, 6N, R19E, GOLDEN COUNTY. THE POINT OF DIVERSION LEGAL LAND DESCRIPTION CHANGE CAME ABOUT BECAUSE THIS IS A CORRECTION SECTION AND DNRC DETERMINED THE NEWLY DESCRIBED POINT OF DIVERSION LEGAL LAND DESCRIPTION MORE ACCURATELY DESCRIBES WHAT IS ACTUALLY ON THE GROUND.

Period of Use: MAY 1 TO SEPTEMBER 30

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		NWNWSE	5	6N	20E	GOLDEN VALLEY
2	2.00		NENESW	5	6N	20E	GOLDEN VALLEY

Total: 5.00

Remarks:

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 40A 197964-00.

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

Water Right Number: 40A 30153500 STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners: ROCKING CB RANCH LLC
% MCKNIGHT, CLAIRE S
51 DEEP CREEK BENCH RD
LIVINGSTON, MT 59047 9112

Priority Date: JUNE 1, 1926

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. 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 STOCKWATERING 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: MUSSELSHELL RIVER

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		NENWSE	2	6N	19E	GOLDEN VALLEY

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: SIMMS DITCH

Period of Use: APRIL 1 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				4	6N	20E	GOLDEN VALLEY

STOCK DRINK FROM DITCHES/LATERALS CONVEYING WATER FROM SIMMS DITCH TO THE PLACE OF USE FOR IRRIGATION CLAIMS 40A 117445-00 AND 40A 117464-00 IN SECTION 4, T6N, R20E.

Remarks:

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.

117445-00 117464-00 30153500

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NOS. 40A 117445-00 AND 40A 117464-00.