

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

\* \* \* \* \*

CLAIMANT: Patrick S. Pump; Mickey L. Ward

ON MOTION OF THE MONTANA WATER COURT

**CASE 40A-0346-R-2022**

40A 198867-00

40A 198868-00

40A 198876-00

**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, conclusion 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 to 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**

Water Right Claims 40A 198867-00, 40A 198868-00, and 40A 198876-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). Each of these claims received a similar issue remark. The claim did not receive any objections or notices of intent to appear, but the Court did call these claims in on its own

motion to address a 1987 order regarding conformance to the Montana Supreme Court decision in Department of State Lands v. Pettibone.

The Court consolidated these claims into Water Court Case 40A-0346-R-2022 on April 22, 2022. The consolidation order set a filing deadline by which the State of Montana was to file a response regarding whether these claims should be modified pursuant to Pettibone.

The State filed a response on April 26, 2022.

### **FINDINGS OF FACT**

1. Each above-captioned claim appeared in the Preliminary Decree with the following issue remark:

THIS CLAIM WILL BE CALLED IN DURING THE NEXT DECREE IN THIS BASIN TO COMPLY WITH THE ORDER GRANTING MOTION TO CONFORM DATED MARCH 2, 1987.

2. The State of Montana's April 26, 2022 response includes three sworn statements of non-interest indicating the State's position that Pettibone does not apply to the three above-captioned claims.

3. The issue remarks should be removed from the above-captioned claims.

### **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 must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

4. The State of Montana holds title to water rights perfected on state school trust lands if the water right was perfected after the State gained title to the land. See *Department of State Lands v. Pettibone*, 216 Mont. 361, 702 P.2d 948 (1985).

### **CONCLUSIONS OF LAW**

1. The information in the record provides the Court with a sufficient basis to resolve and remove each issue remark from each above-captioned claim.

2. The above-captioned claims may be decreed without substantive modifications because the evidence in the record does not overcome the prima facie status of each claim.

3. Pettibone does not apply to the above-captioned claimed water rights because each claimed priority date is earlier than the State's acquisition of each claimed place of use.

### **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.

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Colton J. Lauer  
Water Master

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

**Water Right Number:** 40A 198867-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** PATRICK S PUMP  
PO BOX 245  
TWO DOT, MT 59085 0245

MICKEY L WARD  
PO BOX 208  
TWO DOT, MT 59085

**Priority Date:** DECEMBER 31, 1869

**Type of Historical Right:** USE

**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 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** SPRING, UNNAMED TRIBUTARY OF MILLER CREEK

**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		NWNWSW	36	7N	11E	MEAGHER

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**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			W2NW	36	7N	11E	MEAGHER
2			NWNWSW	36	7N	11E	MEAGHER

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

**Water Right Number:** 40A 198868-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** PATRICK S PUMP  
PO BOX 245  
TWO DOT, MT 59085 0245

MICKEY L WARD  
PO BOX 208  
TWO DOT, MT 59085

**Priority Date:** DECEMBER 31, 1869

**Type of Historical Right:** USE

**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 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** SPRING, UNNAMED TRIBUTARY OF MILLER CREEK, EAST 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		NWSWSE	36	7N	11E	MEAGHER

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**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			SENE	36	7N	11E	MEAGHER
2			W2NESE	36	7N	11E	MEAGHER
3			N2SWSE	36	7N	11E	MEAGHER

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

**Water Right Number:** 40A 198876-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** PATRICK S PUMP  
PO BOX 245  
TWO DOT, MT 59085 0245

MICKEY L WARD  
PO BOX 208  
TWO DOT, MT 59085

**Priority Date:** DECEMBER 31, 1869

**Type of Historical Right:** USE

**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 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** MILLER CREEK

**Source Type:** SURFACE WATER

SOURCE INCLUDES EAST FORK MILLER CREEK AND WEST FORK MILLER CREEK.

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SE	24	7N	11E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2			25	7N	11E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3			36	7N	11E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4		S2	19	7N	12E	WHEATLAND
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5			20	7N	12E	WHEATLAND
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

6 NW 21 7N 12E WHEATLAND

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

7 NWNW 30 7N 12E WHEATLAND

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**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			SE	24	7N	11E	MEAGHER
2				25	7N	11E	MEAGHER
3				36	7N	11E	MEAGHER
4			S2	19	7N	12E	WHEATLAND
5				20	7N	12E	WHEATLAND
6			NW	21	7N	12E	WHEATLAND
7			NWNW	30	7N	12E	WHEATLAND