

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

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CLAIMANTS: Dianne L. Holmes; W Dean Holmes

OBJECTOR: State of Montana Attorney General

**CASE 40A-0535-R-2021**  
40A 205450-00

**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 205450-00 appeared in the Preliminary Decree for the Musselshell River above Roundup (Basin 40A) issued on June 7, 2017. The claim is

owned by W Dean Holmes and Dianne L Holmes. The claims did not receive objections, counterobjections, or notices of intent to appear but did receive issue remarks 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 205450-00 appeared in the Basin 40A Preliminary Decree as a claim for flood irrigation from Careless Creek.

2. The claim received the following issue remark:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT 0 ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

3. The issue remark was placed on claim 40A 205450-00 after the DNRC objected to the claim in the Temporary Preliminary Decree issued on May 3, 1985. The DNRC objected to flow rate, volume, maximum acres, and place of use:

1. Findings and conclusions with which the DNRC disagrees:

Flow Rate: 6.25 cfs

Volume: 890.00 ac-ft/year

Maximum Acres: 445.00

Place of Use For Irrigation:

001 140.00 acres SW Sec 08 T08N R18E Wheatland

002 305.00 acres E2 Sec 07 T08N R18E Wheatland

445.00 acres total

Page No. 5477, Paragraph No. 4, 5, 7 & 11 of (Temporary) Preliminary Decree.

2. Department contends these findings should be:

Flow Rate: 0 (zero)

Volume: 0 (zero)

Maximum Acres: 0 (zero)

Place of Use For Irrigation: none

4. The DNRC conducted a field investigation on April 25, 1986. DNRC Water Rights Technician Gene Gibson met with Joseph D. Pirrie, the former owner of claim 40A 205450-00. Mr. Gibson wrote a Field Investigation Memorandum and determined:

According to Mr. Pirrie the last time the area was irrigated was when a former owner was discharged from the service in 1946. He irrigated part of the area claimed from 1946 until 1949. Since then it has been maintained, but not really used. Mr. Pirrie paid for half the cost of the culverts to be put in on the county road so the system would be operable should he need to use it. He has irrigation in other areas which is why he claims not to be irrigating this area. Mr. Pirrie said that it would take approximately 24 hours and 700 - 800 dollars to have the system in operation. He plans on using this system any time there is a real dry year and his other systems would not supply his needs.

CONCLUSION:

With a little work the POD and ditch can be operable, and out of the 445 acres that the claimant claimed, 210.9 acres could be irrigated with the present system. (See exhibit A and B) The last time this was fully irrigated was in 1949.

5. The DNRC withdrew its objection on July 8, 1986 and stipulated to the 210.9 acres irrigated per Gene Gibson's Field Investigation Memorandum conclusion, above. A Master's Report was issued on October 7, 1998 approving the stipulation. Although the Court approved a reduction to the claimed acreage, the stipulation did not resolve the acres irrigated issue remark and the remark remains unresolved.

6. Pursuant to §85-2-248(5), MCA, Claimants were ordered to meet with personnel from the Lewistown Regional Office of the DNRC and attempt to address and resolve the issues raised by the remark. On February 28, 2022, DNRC Water Resources Specialist Matt Schmidt filed a Memorandum in this matter. The Memorandum indicated that Claimants contacted the DNRC as ordered, but Claimants and the DNRC were unable to reach a resolution.

7. Because the issue remark raised issues of nonperfection or abandonment, the Court joined the Attorney General in this matter.

8. On May 23, 2022, Claimants and the Attorney General filed a stipulation. The stipulation provided for the withdrawal of claim 40A 205450-00.

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 a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

#### CONCLUSION OF LAW

1. The withdrawal of claim 40A 205450-00 resolves the issue remark on the claim. Claim 40A 205450-00 should be dismissed as stipulated.

#### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusion of Law, this Master recommends that the Court dismiss claim 40A 205450-00.

A post decree abstract of the water right claim reflecting the recommended dismissal.

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Melissa Lockman  
Senior Water Master

**Service via USPS Mail**

Dianne L Holmes  
W Dean Holmes  
PO Box 268  
Harlowton, MT 59036-0268  
406-473-2284 H  
406-350-0808

**Service Via Electronic Mail:**

DNRC Water Resources  
Lewistown Regional Office  
613 NE Main, Suite E  
Lewistown, MT 59457-2020  
[sirvin@mt.gov](mailto:sirvin@mt.gov)  
[Michael.Melin@mt.gov](mailto:Michael.Melin@mt.gov)  
[MSchmidt@mt.gov](mailto:MSchmidt@mt.gov)

Emily Jones  
Timothy Longfield  
Office of the Attorney General  
State of Montana  
PO Box 201401  
Helena, MT 59620-1401  
(406) 444-2026  
[emily@joneslawmt.gov](mailto:emily@joneslawmt.gov)  
[Timothy.longfield@mt.gov](mailto:Timothy.longfield@mt.gov)  
[edoj@mt.gov](mailto:edoj@mt.gov)  
[paralegal@joneslawmt.com](mailto:paralegal@joneslawmt.com)

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

**Water Right Number:**      **40A 205450-00**    STATEMENT OF CLAIM

**Version:**            3 -- POST DECREE

**Status:**            **DISMISSED**

**Late Claim:**    A

**Owners:**                    W DEAN HOLMES  
                                  /AKA/ WARREN DEAN HOLMES  
                                  PO BOX 268  
                                  HARLOWTON, MT 59036  
  
                                  DIANNE L HOLMES  
                                  PO BOX 268  
                                  HARLOWTON, MT 59036 0268

**Priority Date:**

**Enforceable Priority Date:**

**Type of Historical Right:**

**Purpose (use):**                    IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:**                    CARELESS CREEK

**Source Type:**                    SURFACE WATER

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

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.