

Montana Water Court
 PO Box 1389
 Bozeman, MT 59771-1389
 (406) 586-4364
 1-800-624-3270
watercourt@mt.gov

40A-0587-R-2022

July 5, 2022

Montana Water Court

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

CLAIMANT: 71 Ranch LP

CASE 40A-0587-R-2022

40A 198325-00

OBJECTOR: 71 Ranch LP

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 Claim 40A 198325-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). The claim received issue remarks. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. The claim also received an objection filed by Claimant 71 Ranch LP

Further proceedings are not necessary to resolve the issues regarding this claim. However, for organizational purposes, this claim is consolidated into Water Court Case 40A-0587-R-2022.

FINDINGS OF FACT

1. Claim 40A 198325-00 appeared with the following issue remarks:

THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

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.

2. Claimant objected to this claim as well. In the objection, Claimant, through counsel, states the following:

The priority date of this claim is correct; the Jay & Ed More May 20, 1891, Notice of Appropriation was filed with the DNRC and placed with water right claim no. 40A 198324 00 and a copy of the Notice of Appropriation can be found on book 2, Page 120, in the Meagher County Courthouse.

3. A copy of a notice of appropriation for 320 Miner's Inches of water from the Bozeman Fork of the Musselshell River with a priority date of May 20, 1891 exists in the claim file for Claim 40A 198324-00. This notice of appropriation was filed with Meagher County on the June 13, 1891. The number "198325" is stamped at the top of this copy. The appropriators are listed as Jay More and Ed More.

4. Claim 40A 198325-00 is a claim for a water right on the Bozeman Fork of the Musselshell River. The claimed priority date is May 20, 1891.

5. The issue remarks should be removed. The relevant notice of appropriation is attached to this Master's Report for inclusion in the claim file.

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.

CONCLUSIONS OF LAW

1. Claim 40A 198325-00 should be decreed without substantive modifications because the issue remarks and information behind the issue remarks do not overcome the prima facie status of this claim.

2. The type of right and priority date are supported by evidence in the claim file for Claim 40A 198324-00, namely, the June 13, 1891 notice of appropriation filed by Ed and Jay More.

3. The issue remarks may be removed from Claim 40A 198325-00 because the evidence in the record provides the Court with a sufficient basis to resolve and remove each issue remark.

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. A post-decree abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state’s centralized record system.

Colton J. Lauer
Water Master

Service Via Electronic Mail:

Colleen Coyle
Coyle Law Firm
141 Discovery Drive, Suite 215
Bozeman, MT 59771
(406) 570-2740
colleen@coylelawmt.com

WATER BENT LOCATION:

To all Whom these Presents may Concern

BE IT KNOWN Y, That

Jan 4 Ed V. Moore.

in said County and State, do hereby publish and declare, as a fact, true to all the world,

8. That the said Three have a full right to the use, possession and control of and claim Three
hundred and twenty (320) Acres more or less in the County of Clark State
for logging and other purposes to the County and State

12. State the special purpose for which said water is intended to be used, and the place of intended use is
 for irrigating the S¹ of S¹ R¹ and S¹ of S¹ E¹ also S¹ of S¹ E¹ and S¹ of S¹ E¹ in Sec 4 Tp 7 N of Range 9 east Helena Land District.

III. That _____ have taken said water out of and disposed it from said Pigman Fork by means of a ditch _____ which said ditch _____ is _____ inches by _____ inches in size and carries or conducts _____ & _____ inches of water from said Pigman Fork said ditch _____ taps and discharges the water from said stream at a point upon the land _____

One and one half miles from its junction with Warm Spring Creek.

thence running or to run to and upon and described land (and through said land, if point of final discharge) *Yr.* as desired, to any reputable

17 That me appropriated and took said water on the fourteenth day of May A. D. 18 94 by means of said ditch

Y That the name(s) of the appropriator(s) _____ of said water are Jay Moore and Ed V Moore

VI That ~~the~~ also hereby claim said ditch and the right of way therefor and for said water by its conveyance, or to be conveyed, from said point of appropriation to said land or point of final discharge, and also the right of location upon any lands of any dam or flume reservoir constructed or to be constructed by ~~the~~ ^{me} in connection with said water.

VII That ~~the~~ also claim the right to keep in repair and to enlarge said means of water appropriation at any time and the right to dispose of the said right, water ditch or said appurtenances in part or whole, at any time

CLAIMING THE SAME All and singular under any and all laws, Natural and Statutory and rulings and decisions thereunder in the matter of water rights and especially under sections 731 to 735 inclusive, and 738 and 741, General Laws of Montana Revised Statutes of 1879 as so amended and under an act of the Legislature, Assembly of the Territory of Montana entitled "An Act relative to Water Rights" approved March 12th, A. D. 1885

TOGETHER WITH ALL AND SINGULAR The hereditaments and appurtenances thereto belonging or appertaining or to accrue to the same

Witness my hand at Castle Montana this 18 day of June 1891

1 my More .
Ex. 5. More.

State OF MONTANA,
County of Meagher

Ed. V More

been fully aware, deposit and say S that he is of full age and of legal mind, having first read and explained the water and water right mentioned in the foregoing Notice and Statement of appropriation and that S, and the person S knows name RA, subscribed thereto as the appropriator and claimant S that he knows the contents of said notice and statement foregoing and that the matters and things therein stated are true

Ed. V. Mosh

Subscribed and sworn to before me, this 13th day of June 1899

Lafayette Peewee
Notary Public

Filed for Record, this 14th 1891.
By _____
Attest _____
Notary Public for the State of New York.

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

Water Right Number: 40A 198325-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: 71 RANCH LP
40 71 RANCH LN
MARTINSDALE, MT 59053 8709

Priority Date: MAY 20, 1891

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.46 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: 65.00

Source Name BOZEMAN FORK 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		SENENW	16	7N	9E	MEAGHER

Period of Diversion: MAY 15 TO OCTOBER 15

Diversion Means: HEADGATE

Period of Use: MAY 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	40.00		SE	4	7N	9E	MEAGHER
2	25.00		E2SW	4	7N	9E	MEAGHER
Total:	65.00						