

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

\*\*\*\*\*

CLAIMANT: Rein Anchor Ranch Partnership

OBJECTOR: Rein Anchor Ranch Partnership

**CASE 40A-0314-R-2022**

40A 10206-00

40A 10207-00

40A 10208-00

**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 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 10206-00, 40A 10207-00, and 40A 10208-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A) issued June 7, 2017. These claims also appeared in the Preliminary Decree for Sweet Grass Creek (Basin 43BV) issued May 27, 2021. These claims 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. Each of these claims received an objection filed by Claimant Rein Anchor Ranch Partnership.

Additional information is not necessary to resolve the issue remarks on each claim. However, for organizational purposes, these claims are consolidated into Water Court Case 40A-0314-R-2022.

### **FINDINGS OF FACT**

1. Claims 40A 10206-00 and 40A 10207-00 appeared in the Basin 40A and 43BV Preliminary Decrees with the following issue remarks:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON AMERICAN FORK, SOUTH FORK WITH A PRIORITY DATE PREDATING CASE NO. 374 , SWEET GRASS COUNTY.

THIS INTERBASIN TRANSFER CLAIM WAS NOT INCLUDED IN THE 43BV BASIN TEMPORARY PRELIMINARY DECREE ISSUED 12/19/1984.

2. Claim 40A 10208-00 appeared in Basin 40A and 43BV Preliminary Decrees with the following issue remarks:

THE TIMELY FILED OBJECTIONS OF CHARLES M. REIN, AMERICAN FORK RANCH, THE GLENNIE RANCHES, INC., AND TWO DOT LAND & LIVESTOCK CO. WERE AMENDED BY STIPULATION OF THE PARTIES TO INCLUDE THE ELEMENTS OF SOURCE AND POINT OF DIVERSION. BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE TEMPORARY PRELIMINARY DECREE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

THE PERIOD OF DIVERSION MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF THE PERIOD OF USE ISSUE. THE ACTUAL HISTORICAL PERIOD OF USE FOR THIS WATER RIGHT IS FROM MAY 1 TO SEPTEMBER 15. COMPUTER PROGRAM

LIMITATIONS DO NOT ALLOW THE CORRECT PERIOD OF USE TO BE PRINTED ABOVE.

RESERVOIR RECORD 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.

MORE INFORMATION IS NEEDED. IT IS UNCLEAR WHICH DIVERSION IS USED TO FILL REIN LAKE. FURTHER, IT APPEARS MULTIPLE SOURCES MAY BE INVOLVED. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

IT IS UNCLEAR IF THIS CLAIM'S TYPE OF RIGHT IS CORRECT. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE DOES NOT APPEAR TO BE IN THE CLAIM FILE.

THIS INTERBASIN TRANSFER CLAIM WAS NOT INCLUDED IN THE 43BV BASIN TEMPORARY PRELIMINARY DECREE ISSUED 12/19/1984.

3. During the Objection Period for Basin 43BV, Claimant Rein Anchor Ranch Partnership objected to All Elements of each above-captioned claim. In each objection, Claimant requests the issue remarks be removed and the claim remain as decreed because each claim was previously included and adjudicated in Water Court Case 40A-25.

4. The above-captioned claims were the subject of a Master's Report in Case 40A-25. This Master's Report modified the elements of Claim 40A 10208-00 referenced in the issue remarks. *See* Notice of Filing of Master's Report, Dec. 5, 1994; Order Amending and Adopting Master's Report, Nov. 27, 1995.

5. While historical decrees provide some evidence of existing water rights on a given source, they are not conclusive. There are numerous reasons why a water right may not have appeared in Case No. 374 in Sweet Grass County. Decrees were often the result of a specific controversy, and multiple decrees may have been issued on the same source due to the piecemeal nature of water rights adjudication. *See* Albert Stone, *Are There Any Adjudicated Streams in Montana?* 19 Mont. L. Rev. 19 (1957).

6. These claims did not receive objections from other parties in either basin in which they appeared.

7. 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.

### **CONCLUSIONS OF LAW**

1. Claims 40A 10206-00 and 40A 10207-00 may be decreed without modification to any substantive element because the issue remarks and information behind the remarks do not overcome the prima facie status of those claims.

2. Claim 40A 10208-00 may be decreed without modification to any substantive element because the issues raised by the issue remarks were addressed by a previous Water Master in Case 40A-25.

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

### **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.

---

Colton J. Lauer  
Water Master

**Service via USPS Mail:**

Rein Anchor Ranch Partnership  
198 Rein Lane  
Big Timber, MT 59011

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

**Water Right Number:** 40A 10206-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** REIN ANCHOR RANCH PARTNERSHIP  
 198 REIN LANE  
 BIG TIMBER, MT 59011 7744

**\*Priority Date:** DECEMBER 5, 1906

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION  
**Irrigation Type:** FLOOD

**\*Flow Rate:** 5.00 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:** 124.00

**Source Name:** SOUTH FORK AMERICAN FORK  
**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		NWNESE	21	5N	12E	SWEET GRASS

**\*Period of Diversion:** MAY 1 TO SEPTEMBER 15  
**Diversion Means:** HEADGATE

**\*Period of Use:** MAY 1 TO SEPTEMBER 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	65.00		S2	23	5N	12E	SWEET GRASS
2	18.00		N2	24	5N	12E	SWEET GRASS
3	41.00		N2	26	5N	12E	SWEET GRASS
<b>Total:</b>	<u>124.00</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.

10206-00      10207-00      10208-00      10209-00      196362-00

THIS APPROPRIATION OF WATER TAKES WATER FROM THE UPPER MUSSELSHELL RIVER DRAINAGE (BASIN 40A) AND USES IT IN THE UPPER MUSSELSHELL RIVER DRAINAGE (BASIN 40A) AND THE SWEET GRASS CREEK DRAINAGE (BASIN 43BV). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.



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

**Water Right Number:** 40A 10207-00 STATEMENT OF CLAIM  
**Version:** 4 -- POST DECREE  
**Status:** ACTIVE

**Owners:** REIN ANCHOR RANCH PARTNERSHIP  
 198 REIN LANE  
 BIG TIMBER, MT 59011 7744

**Priority Date:** JULY 28, 1904

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION  
**Irrigation Type:** FLOOD

**\*Flow Rate:** 15.00 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:** 254.00

**Source Name:** SOUTH FORK AMERICAN FORK  
**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		NWNESE	21	5N	12E	SWEET GRASS

**\*Period of Diversion:** MAY 1 TO SEPTEMBER 15

**Diversion Means:** HEADGATE

**\*Period of Use:** MAY 1 TO SEPTEMBER 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	35.00		N2NE	13	5N	12E	SWEET GRASS
2	5.00		SENE	13	5N	12E	SWEET GRASS
3	5.00		NENENW	13	5N	12E	SWEET GRASS
4	10.00		W2NESE	13	5N	12E	SWEET GRASS
5	5.00		E2NWSE	13	5N	12E	SWEET GRASS
6	65.00		S2	23	5N	12E	SWEET GRASS
7	18.00		N2	24	5N	12E	SWEET GRASS
8	41.00		N2	26	5N	12E	SWEET GRASS
9	70.00		N2	18	5N	13E	SWEET GRASS
<b>Total:</b>	<b>254.00</b>						

**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.

10206-00

10207-00

10208-00

10209-00

196362-00

THIS APPROPRIATION OF WATER TAKES WATER FROM THE UPPER MUSSELSHELL RIVER DRAINAGE (BASIN 40A) AND USES IT IN THE UPPER MUSSELSHELL RIVER DRAINAGE (BASIN 40A) AND THE SWEET GRASS CREEK DRAINAGE (BASIN 43BV). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.

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

**Water Right Number:** 40A 10208-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** REIN ANCHOR RANCH PARTNERSHIP  
198 REIN LANE  
BIG TIMBER, MT 59011 7744

**\*Priority Date:** MAY 3, 1957

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**\*Flow Rate:** 18.00 CFS

**\*Volume:** 1,258.00 AC-FT

**Climatic Area:** 4 - MODERATELY LOW

**\*Maximum Acres:** 148.00

**\*Source Name:** SOUTH FORK AMERICAN FORK

**Source Type:** SURFACE WATER

THIS WATER RIGHT ALSO INCLUDES SURFACE WATER FROM BLACKABY CREEK.

**\*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		NWNESE	21	5N	12E	SWEET GRASS

**\*Period of Diversion:** APRIL 15 TO SEPTEMBER 14

**Diversion Means:** HEADGATE

2		SWNESW	22	5N	12E	SWEET GRASS
---	--	--------	----	----	-----	-------------

**\*Period of Diversion:** APRIL 15 TO SEPTEMBER 14

**Diversion Means:** HEADGATE

**\*Reservoir:** OFFSTREAM **Reservoir Name:** REIN LAKE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	S2	14	5N	12E	SWEET GRASS

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 21.00 FEET

**Depth:** 18.00 FEET

**Surface Area:** 78.90 ACRES

**Capacity:** 568.08 ACRE-FEET

**\*Period of Use:** APRIL 15 TO SEPTEMBER 14

**\*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	35.00		N2NE	13	5N	12E	SWEET GRASS

2	5.00	SENE	13	5N	12E	SWEET GRASS
3	5.00	NENENW	13	5N	12E	SWEET GRASS
4	10.00	W2NESE	13	5N	12E	SWEET GRASS
5	5.00	E2NWSE	13	5N	12E	SWEET GRASS
6	18.00	N2	24	5N	12E	SWEET GRASS
7	70.00	N2	18	5N	13E	SWEET GRASS
<b>Total:</b>	<u>148.00</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.

10206-00                      10207-00                      10208-00                      10209-00                      196362-00

THIS APPROPRIATION OF WATER TAKES WATER FROM THE UPPER MUSSELSHELL RIVER DRAINAGE (BASIN 40A) AND USES IT IN THE UPPER MUSSELSHELL RIVER DRAINAGE (BASIN 40A) AND THE SWEET GRASS CREEK DRAINAGE (BASIN 43BV). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.