

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

\* \* \* \* \*

CLAIMANTS: Jawbone Cattle Co. Inc.; Roger C. Zikmund

CASE 40A-0433-R-2022  
40A 203579-00

**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 Claim 40A 203579-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). The claim received an issue remark. 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 did not receive any objections or notices of intent to appear.

The Court consolidated this claim into Water Court Case 40A-0433-R-2022 on June 29, 2022. The consolidation order set a filing deadline by which Claimant was to file information resolving the issue remark. Vickie Zikmund filed a response for Claimant Jawbone Cattle Company on July 18, 2022.

### **FINDINGS OF FACT**

1. Claim 40A 203579-00 appeared with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM THE AVAILABLE DATA.

2. Claimant Jawbone Cattle Company's response includes an explanation of Claimant's position and a marked-up aerial photograph. Claimant states the following:

"The POD is correct as shown on the Statement of Claim (SWSWSE Sec 18, T8N, R9E)."

The aerial photograph is marked to depict the location and path of a ditch originating in the SWSWSE Sec 18, T8N, R9E.

3. The issue remark should be removed.

### **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. No modifications should be made to substantive elements of the above-captioned claim because the issue remark and information behind the issue remark do not overcome the prima facie status of the claim.
2. The information in the record provides the Court with a sufficient basis to resolve and remove the issue remark from the 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. 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.

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Colton J. Lauer  
Water Master

#### **Service via USPS Mail:**

Jawbone Cattle Co. Inc.  
% Vickie L. Zikmund  
Roger C. Zikmund  
552 Castle Town Rd  
Martinsdale, MT 59053

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

**Water Right Number:** 40A 203579-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** JAWBONE CATTLE CO INC  
% VICKIE L ZIKMUND  
552 CASTLE TOWN RD  
MARTINSDALE, MT 59053 8734  
  
ROGER C ZIKMUND  
552 CASTLE TOWN RD  
MARTINSDALE, MT 59053

**Priority Date:** OCTOBER 18, 1898  
**Type of Historical Right:** FILED  
**Purpose (use):** IRRIGATION  
**Irrigation Type:** FLOOD  
**\*Flow Rate:** 1.00 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:** 12.00  
**Source Name:** ROBINSON CREEK  
**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		SWSWSE	18	8N	9E	MEAGHER	
<b>Period of Diversion:</b> MAY 15 TO SEPTEMBER 15							
<b>Diversion Means:</b> HEADGATE							
<b>Period of Use:</b> MAY 15 TO SEPTEMBER 15							
<b>*Place of Use:</b>							
<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	12.00		SE	20	8N	9E	MEAGHER
<b>Total:</b>	12.00						