

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

* * * * *

CLAIMANTS: Patrick S. Pump; Mickey L. Ward

CASE 40A-0569-R-2022

40A 198871-00

40A 207603-00

40A 207604-00

40A 207605-00

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 198871-00, 40A 207603-00, 40A 207604-00, and 40A 207605-00 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 these claims into Water Court Case 40A-0569-R-2022 on April 22, 2022. The consolidation order set a filing deadline by which Claimants were to file information resolving the issue remarks.

Claimants filed a response on June 14, 2022.

FINDINGS OF FACT.

1. Claim 40A 198871-00 appeared with the following issue remark:

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

2. Claims 40A 207603-00, 40A 207604-00, and 40A 207605-00 appeared with the following issue remarks:

AN AMENDMENT WAS SUBMITTED ON 05/09/2016 REQUESTING TO AMEND THE FLOW RATE AND SOURCE NAME. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

THE TIMELY FILED OBJECTION OF DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE POINT OF DIVERSION. BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

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

3. In Claimants June 14, 2022 response, Claimants state they wish to withdraw the amendments referenced in the issue remarks on the above claims. Claimants also include in their response a motion to amend Claim 40A 198871-00. Claimants request the addition of a reservoir element to the claim. Attached to the motion are various documents from the claim file and a June 10, 2022 affidavit of David Pump.

4. David Pump, in his affidavit, states he has lived near Section 21, T7N, R12E in Wheatland County from 1946 to 2022. He states he has been involved in the ranching operations of the lands comprising Pump Ranch. Mr. Pump further states he has personal knowledge of the diversion location for Claim 40A 198871-00, which he indicates is on Miller Creek. An attached aerial image depicts the point of diversion in the SENENW of Section 21, T7N, R12E. This image also depicts a reservoir in the NWSWNE of said section.

5. Evidence of a reservoir associated with the claimed water right exists in the claim file. A hand-drawn map attached to the original statement of claim depicts a reservoir supplied by a pump and pipeline.

6. All elements of Claim 40A 198871-00 appeared on the Objection List of Basin 40A.

7. Stock claims are not decreed with volumes. Rule 24(c), W.R.C.E.R.

8. The proposed reservoir addition would not likely adversely affect other water users in the basin.

9. A reservoir record should be added to Claim 40A 198871-00. The reservoir legal land description should be NWSWNE of Section 21, T7N, R12E. the reservoir is “offstream.” The source should be described as “Miller Creek.”

10. 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. The changes described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of the claim by a preponderance of the evidence.

2. The evidence in the record and the proposed changes provide 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:

Patrick S. Pump
PO Box 245
Two Dot, MT 59085

Mickey L. Ward
PO Box 208
Two Dot, MT 59085

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

Water Right Number: 40A 198871-00 STATEMENT OF CLAIM

Version: 3 -- 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: MAY 15, 1958

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: 15.00 GPM

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

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	21	7N	12E	WHEATLAND

Period of Diversion: APRIL 1 TO NOVEMBER 30

Diversion Means: PUMP

Reservoir: OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSWNE	21	7N	12E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Period of Use: APRIL 1 TO NOVEMBER 30

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			NWSWNE	21	7N	12E	WHEATLAND

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

Water Right Number: 40A 207603-00 STATEMENT OF CLAIM
Version: 3 -- 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: OCTOBER 31, 1888
Type of Historical Right: DECREED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: 215.42 GPM
***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:** 117.50
***Source Name:** MILLER CREEK
Source Type: SURFACE WATER

CASE NO. 1776 WHEATLAND CNTY DECREES THE SOURCE AS LITTLE ELK CREEK. THE SOURCE IS NOW KNOWN AS MILLER CREEK AS DENOTED ON THE UNITED STATES GEOLOGICAL SURVEY TOPOGRAPHIC MAP.

***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		NENESE	19	7N	12E	WHEATLAND
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: PUMP						
2		SESWNE	20	7N	12E	WHEATLAND
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: DITCH						
*Period of Use: MARCH 1 TO NOVEMBER 30						
*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	4.50		SENESE	17	7N	12E	WHEATLAND
2	32.00		SESE	17	7N	12E	WHEATLAND
3	0.50		SESWSE	17	7N	12E	WHEATLAND
4	2.00		NENESE	19	7N	12E	WHEATLAND
5	37.00		NENE	20	7N	12E	WHEATLAND

6	1.00	NENWNE	20	7N	12E	WHEATLAND
7	10.00	N2SENE	20	7N	12E	WHEATLAND
8	0.50	NWNWSW	20	7N	12E	WHEATLAND
9	3.50	NWNENW	21	7N	12E	WHEATLAND
10	26.50	NWNW	21	7N	12E	WHEATLAND
Total:						117.50

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.

207603-00

207604-00

207605-00

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

Water Right Number: 40A 207604-00 STATEMENT OF CLAIM
Version: 3 -- 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: OCTOBER 25, 1892
Type of Historical Right: DECREED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: 139.20 GPM
***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:** 117.50
***Source Name:** MILLER CREEK
Source Type: SURFACE WATER

CASE NO. 1776 WHEATLAND CNTY DECREES THE SOURCE AS LITTLE ELK CREEK. THE SOURCE IS NOW KNOWN AS MILLER CREEK AS DENOTED ON THE UNITED STATES GEOLOGICAL SURVEY TOPOGRAPHIC MAP.

***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		NENESE	19	7N	12E	WHEATLAND
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: PUMP						
2		SESWNE	20	7N	12E	WHEATLAND
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: HEADGATE						
*Period of Use: MARCH 1 TO NOVEMBER 30						
*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	4.50		SENESE	17	7N	12E	WHEATLAND
2	32.00		SESE	17	7N	12E	WHEATLAND
3	0.50		SESWSE	17	7N	12E	WHEATLAND
4	2.00		NENESE	19	7N	12E	WHEATLAND
5	37.00		NENE	20	7N	12E	WHEATLAND

6	1.00	NENWNE	20	7N	12E	WHEATLAND
7	10.00	N2SENE	20	7N	12E	WHEATLAND
8	0.50	NWNWSW	20	7N	12E	WHEATLAND
9	3.50	NWNENW	21	7N	12E	WHEATLAND
10	26.50	NWNW	21	7N	12E	WHEATLAND
Total:						117.50

Remarks:

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207603-00

207604-00

207605-00

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

Water Right Number: 40A 207605-00 STATEMENT OF CLAIM
Version: 3 -- 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: SEPTEMBER 30, 1911
Type of Historical Right: DECREED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: 3.13 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:** 117.50
***Source Name:** MILLER CREEK
Source Type: SURFACE WATER

CASE NO. 1776 WHEATLAND CNTY DECREES THE SOURCE AS LITTLE ELK CREEK. THE SOURCE IS NOW KNOWN AS MILLER CREEK AS DENOTED ON THE UNITED STATES GEOLOGICAL SURVEY TOPOGRAPHIC MAP.

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1		NENESE	19	7N	12E	WHEATLAND
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: PUMP						
2		SESWNE	20	7N	12E	WHEATLAND
*Period of Diversion: MARCH 1 TO NOVEMBER 30						
Diversion Means: DITCH						
*Period of Use: MARCH 1 TO NOVEMBER 30						
*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	4.50		SENESE	17	7N	12E	WHEATLAND
2	32.00		SESE	17	7N	12E	WHEATLAND
3	0.50		SESWSE	17	7N	12E	WHEATLAND
4	2.00		NENESE	19	7N	12E	WHEATLAND
5	37.00		NENE	20	7N	12E	WHEATLAND

6	1.00	NENWNE	20	7N	12E	WHEATLAND
7	10.00	N2SENE	20	7N	12E	WHEATLAND
8	0.50	NWNWSW	20	7N	12E	WHEATLAND
9	3.50	NWNENW	21	7N	12E	WHEATLAND
10	26.50	NWNW	21	7N	12E	WHEATLAND
Total:						117.50

Remarks:

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207603-00

207604-00

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