

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

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CLAIMANTS: Edwin R. Bray; Georgia K. Bray

CASE 40C-0228-R-2020
40C 208369-00

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 40C 208369-00 appeared in the Preliminary Decree for the Musselshell River, below Roundup (Basin 40C). 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 case on May 7, 2020. The consolidation order set a deadline by which Claimants were to file information supporting a requested amendment referenced in the issue remark on the claim. The Court did not receive any response by the filing deadline. On May 4, 2022, the Court set a second deadline for the same purpose. The Court again did not receive a response by the deadline.

FINDINGS OF FACT

1. Claim 40C 208369-00 appeared with the following issue remark:

AN AMENDMENT WAS SUBMITTED ON 05/16/2016 REQUESTING TO AMEND THE FLOW RATE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

2. The flow rate appeared on the Preliminary Decree abstract for this claim as 1.25 cubic feet per second (cfs).

3. The amendment referenced in the issue remark is signed by both claimants. Claimants request the flow rate be increased to 2,000 gallons per minute (gpm), or 4.46 cfs. Evidence is not attached to the amendment. The claimed flow rate was reduced by the DNRC pursuant to standards on September 6, 1984.

4. The Statement of Claim, filed April 30, 1982, indicates a claimed flow rate of 1,800 gpm, or 4.01 cfs. Attached to the Statement of Claim is an April 29, 1982 affidavit of Ted Archer. Mr. Archer stated that the “flow rate of use” for the claimed 1898 water right was “1,800.”

5. The flow rate and volume of this claim appeared on the Objection List for Basin 40C.

6. The flow rate of this claim should appear as 4.01 cfs.

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 flow rate of the above-captioned claim should be changed to 4.01 cfs because that is the originally claimed flow rate. This flow rate was supported by a sworn affidavit. The flow rate should not be increased to 4.46 cfs because Claimants did not provide additional evidence supporting the additional flow rate.

2. The information in the record and the change described in the Findings of Fact provide 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.

Colton J. Lauer
Water Master

Service via USPS Mail:

Edwin R. Bray
Georgia K. Bray
PO Box 215
Musselshell, MT 59059

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, BELOW ROUNDUP
BASIN 40C

Water Right Number: 40C 208369-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: EDWIN R BRAY
PO BOX 215
MUSSELSHELL, MT 59059

GEORGIA K BRAY
PO BOX 215
MUSSELSHELL, MT 59059

Priority Date: DECEMBER 31, 1898

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 4.01 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 1 - HIGH

Maximum Acres: 33.00

Source Name: 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		NWNESW	25	9N	28E	MUSSELSHELL

Period of Diversion: MAY 15 TO OCTOBER 1

Diversion Means: PUMP

2		NENESE	26	9N	28E	MUSSELSHELL
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Period of Diversion: MAY 15 TO OCTOBER 1

Diversion Means: PUMP

Period of Use: MAY 15 TO OCTOBER 1

***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	13.00		NESW	25	9N	28E	MUSSELSHELL
2	20.00		E2SE	26	9N	28E	MUSSELSHELL

Total: 33.00

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.

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