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FILED
02/27/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: Julie Cristiani
40A-0311-R-2022
Lauer, Colton
6.00

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

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CLAIMANT: Perry J. & Lynnda K. Langston Trust	**CASE 40A-0311-R-2022** 40A 210843-00

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 210843-00 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 did not receive any objections or notices of intent to appear.

The Court consolidated this claim into Water Court Case 40A-0311-R-2022 on June 29, 2022. The consolidation order set a filing deadline by which Claimant was to file information resolving the issue remarks. The Court reset the filing deadline on October 17, 2022. Perry Langston, representative of Claimant, filed responses on November 14, and 15, 2022.

FINDINGS OF FACT

1. Claim 40A 210843-00 appeared with the following issue remarks:

   FEE INSUFFICIENT TO COVER CLAIM.

   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.

   THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 32 TIMES THE CAPACITY OF THE RESERVOIR.

2. Perry Langston states the following in the November 14, 2022 response:

   After reading your letter I must agree that the volume indicated is excessive for the purpose intended. I remeasured the reservoir, and the following are the findings. It is 471 feet across the bottom of the dam and is 486 from the dam to the intake. This gives a total area of 114,453 sq. ft. or 2.63 acre feet of surface. In my discussion with the Lewistown office it is widely accepted that the surface times the 16 feet of depth at the dam produces a volume of 16.8 acre feet of total capacity.

   The reservoir is used annually for irrigation by pump and line and for watering cattle.

   It is difficult to calculate exactly how many times the pond is cycled when we are pumping, because it continues to fill even though we are taking water out of the dam. An educated guess would be that the pond is recycled about 7 times each season and would require approximately 120 acre feet of water.

3. The volume of Claim 40A 210843-00 should be described as 120.00 acre-feet. The surface area and capacity of the claimed reservoir should be described as 2.63 acres and 16.80 acre-feet, respectively.

4. The November 15, 2022 filing is a receipt for payment of a fee to the DNRC. An email from Mike Melin of the DNRC indicates the fee is sufficient and resolves the associated issue remark.

5. The issue remarks on Claim 40A 210843-00 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.

4. If a Claimant agrees to reduce an element of their claim, the Court does not need to make a determination as to whether the burden of proof has been met. Rule 17(c), W.R.Adj.R.

CONCLUSIONS OF LAW

1. Claimant's statement proposing a reduction in the claimed volume is sufficient to make the changes described in the Findings of Fact.

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 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.

ELECTRONICALLY SIGNED AND DATED BELOW.

<u>Service via USPS Mail:</u>

Perry J. & Lynnda K. Langston Trust
14411 235th St SE
Snohomish, WA 98296

Electronically Signed By:
Hon. Judge Colton Lauer
Mon, Feb 27 2023 01:54:06 PM

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

Water Right Number: **40A 210843-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: LANGSTON, PERRY J & LYNNDA K TRUST
14411 235TH ST SE
SNOHOMISH, WA 98296

Priority Date: MAY 2, 1954

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 120.00 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 80.00

Source Name: UNNAMED TRIBUTARY OF AMERICAN FORK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SWNWSE	14	6N	14E	WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

Govt Lot	Qtr Sec	Sec	Twp	Rge	County
	SWNWSE	14	6N	14E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Dam Height: 16.00 FEET

Depth: 14.00 FEET

Surface Area: 2.63 ACRES

Capacity: 16.80 ACRE-FEET

Period of Use: MAY 1 TO OCTOBER 1

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	80.00		W2NE	14	6N	14E	WHEATLAND
Total:	80.00						

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.

204372-00 210843-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

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