

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

\* \* \* \* \*

CLAIMANTS: Linda K. Teig; Ronald E. Teig Sr; 71 Ranch  
LP

OBJECTORS: Linda K. Teig; Ronald E. Teig Sr.

COUNTEROBJECTOR: 71 Ranch LP

**CASE 40A-0376-R-2022**

40A 12513-00

40A 205659-00

**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 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

Claims 40A 12513-00 and 40A 205659-00 appeared in the Preliminary Decree for the Missouri River Above Holter Dam (Basin 40A) issued on June 7, 2017. Claim 40A 12513-00 is owned by Ronald and Linda Teig. Claim 40A 205659-00 is owned by 71 Ranch LP. The Teigs objected to both claims. 71 Ranch LP counterobjected to claim 40A 12513-00. The claims also received issue remarks. Issue remarks are notations identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

### FINDINGS OF FACT

1. Claim 40A 12513-00 was decreed as a flood irrigation claim that diverts 7.50 CFS from Loco Creek via a headgate in Government Lot 6 in the NWSW of Section 6, T6N, R11E, Meagher County.

2. Claim 40A 205659-00 was decreed as a flood irrigation claim that diverts 2.46 CFS from Loco Creek via a headgate in Government Lot 6 in the NWSW of Section 6, T6N, R11E, Meagher County.

3. Both claims received the following issue remark:

THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 40A 12513-00, 40A 205659-00.

4. The objections seek to resolve the over appropriation issue remark and modify elements of each claim to conform them to historical use.

5. Both claims are based on the same filed notice of appropriation. The Notice of Appropriation is for 300 miner's inches (7.50 CFS).

6. The parties reached an agreement to resolve the over appropriation issue remark and the parties' objections. (Doc.<sup>1</sup> 29.00). The parties requested the following information remark be added to the flow rate of both claims:

**THE TOTAL COMBINED FLOW RATE FOR CLAIMS 40A 205659-00 AND 40A 12513-00 IS LIMITED TO 7.5 CFS**

7. The stipulation also requested modifications to the place of use and maximum acres of each claim.

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<sup>1</sup> "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

8. Claim 40A 12513-00 was decreed with a 213.00-acre place of use as follows:

Place of Use:							
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	56.10		E2NE	30	7N	11E	MEAGHER
2	26.00		SWNE	30	7N	11E	MEAGHER
3	63.80		N2SE	30	7N	11E	MEAGHER
4	34.50		S2SW	30	7N	11E	MEAGHER
5	32.60		W2W2	31	7N	11E	MEAGHER
<b>Total:</b>	<b>213.00</b>						

9. The Stipulation proposed the following changes to the place of use:

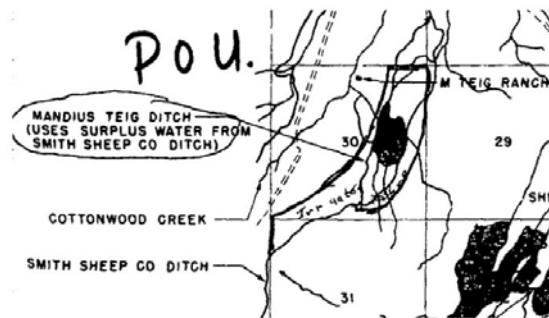
Place of Use:							
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	56.10		E2NE	30	7N	11E	MEAGHER
2	26.00		SWNE	30	7N	11E	MEAGHER
3	63.80		N2SE	30	7N	11E	MEAGHER
4	34.50		S2SW	30	7N	11E	MEAGHER
5	30.00		N2SW	30	7N	11E	MEAGHER
5	32.60		W2W2	31	7N	11E	MEAGHER
6	18.00		S2SE	30	7N	11E	MEAGHER
<b>Total:</b>	<b>213.00 261.00</b>						

10. Although the place of use and maximum acreage totals in the stipulation list 261.00 acres<sup>2</sup>, the total of the parcels is 228.40.

11. The Teigs clarified that the correct acreage total is 228.40. (Doc. 31.00).

12. The proposed modifications result in a 15.40-acre increase, which includes 18.00 acres in the S2SE of Section 30, T7N, R11E, Meagher County.

13. The S2SE of Section 30, T7N, R11E, Meagher County was historically irrigated under claim 40A 12513-00. The outlined area on the Water Resource Survey map is consistent with claimed place of use and includes the S2SE of Section 30, T7N, R11E, Meagher County:



<sup>2</sup> The total of 261.00 acres includes the 32.60 acres in the W2W2 of Section 31, T7N, R11E, Meagher County which was removed as part of the Stipulation.

14. Additionally, Claimant stated that since at least 1959, Claimants and their predecessors have irrigated the S2SE of Section 30, T7N, R11E, Meagher County. (See Exhibit G, Doc. 31.00).

15. Claim 40A 205659-00 was decreed with a 65.00-acre place of use as follows:

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	12.00		SWSW	17	7N	11E	MEAGHER
2	32.00		NWNW	20	7N	11E	MEAGHER
3	15.00		SWNW	20	7N	11E	MEAGHER
4	6.00		NWSW	20	7N	11E	MEAGHER
<b>Total:</b>	<b>65.00</b>						

16. The Stipulation proposes the following changes to the place of use:

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	12.00		SWSW	17	7N	11E	MEAGHER
2	32.00		NWNW	20	7N	11E	MEAGHER
3	15.00		SWNW	20	7N	11E	MEAGHER
4 1	6.00		NWSW	20	7N	11E	MEAGHER
2	13.70		SWSW	20	7N	11E	MEAGHER
3	27.00		SESE	19	7N	11E	MEAGHER
4	0.50		SESWSE	19	7N	11E	MEAGHER
<b>Total:</b>	<b>65.00</b>	<b>51.20</b>					

17. Although the overall effect of the proposed changes is a reduction to the maximum acreage, the changes include acreage in the SWSW of Section 20, T7N, R11E, the SESE and the SESWSE of Section 19, T7N, R11E, Meagher County, neither of which were previously decreed.

18. 71 Ranch LP provided aerial photographs from 1961, 1977, and 2016 showing consistent irrigation in Sections 19 and 20, T7N, R11E, Meagher County.

19. The SWSW of Section 20, T7N, R11E, the SESE of Section 19, T7N, R11E, Meagher County, and the SESWSE of Section 19, T7N, R11E, Meagher County were historically irrigated under claim 41I 205659-00.

20. The claims also received the following notice-type issue remark:

POINT OF DIVERSION 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.

21. This remark served its notice purpose.

### PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. 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.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

8. The party seeking to overcome the prima facie status of a Statement of Claim bears the burden of proof; this burden also applies to a claimant’s objection to his own claim. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

9. The Water Court is not bound by parties’ settlement agreements. Any settlement reached by the parties is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

#### CONCLUSIONS OF LAW

1. The over appropriation issue remark and related objections overcome the prima facie status of claims 40A 12513-00 and 40A 205659-00. The addition of a limiting information remark resolves the issue remark and the objections to the flow rate of both claims.

2. The objections to the place of use and maximum acres of claim 40A 12513-00 overcome the prima facie status of the claim. The evidence shows the place of use and maximum acres should be modified to 228.40 acres as described in Finding of Fact No. 9.

Modification of the place of use and maximum acres resolves the objections to claim 40A 12513-00.

3. The objections to the place of use and maximum acres of claim 40A 205659-00 overcome the prima facie status of the claim. The evidence shows the place of use and maximum acres should be modified to 51.20 acres as described in Finding of Fact No. 16. Modification of the place of use and maximum acres resolves the objections to claim 40A 205659-00.

4. The notice issue remark served its notice purpose.

RECOMMENDATIONS

1. The following information remark should be added to the flow rate of claims 40A 12513-00 and 40A 205659-00:

2. The place of use and maximum acres of claim 40A 12513-00 should be modified to 228.40 acres as follows:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	56.10		E2NE	30	7N	11E	MEAGHER
2	26.00		SWNE	30	7N	11E	MEAGHER
3	63.80		N2SE	30	7N	11E	MEAGHER
4	34.50		S2SW	30	7N	11E	MEAGHER
5	30.00		N2SW	30	7N	11E	MEAGHER
5	32.60		W2W2	34	7N	11E	MEAGHER
6	18.00		S2SE	30	7N	11E	MEAGHER

3. The place of use and maximum acres of claim 40A 205659-00 should be modified to 51.20 acres as follows:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	42.00		SWSW	17	7N	11E	MEAGHER
2	32.00		NWNW	20	7N	11E	MEAGHER
3	45.00		SWNW	20	7N	11E	MEAGHER
4	6.00		NWSW	20	7N	11E	MEAGHER
2	13.70		SWSW	20	7N	11E	MEAGHER
3	27.00		SESE	19	7N	11E	MEAGHER
4	0.50		SESWSE	19	7N	11E	MEAGHER

4. The issue remarks should be removed from the claim abstracts.

A post decree abstract of each water right claim reflecting the recommended changes is attached to this Report.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via Electronic Mail:**

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

**Water Right Number:** 40A 12513-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** LINDA K TEIG  
PO BOX 14  
MARTINSDALE, MT 59053-0014

RONALD E TEIG SR  
PO BOX 14  
MARTINSDALE, MT 59053-0014

**Priority Date:** JULY 13, 1898

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 7.50 CFS

THE COMBINED FLOW RATE FOR CLAIMS 40A 12513-00 AND 40A 205659-00 IS LIMITED TO 7.50 CFS.

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

**Climatic Area:** 5 - LOW

**Maximum Acres:** 228.40

**Source Name:** LOCO 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	6	NWSW	6	6N	11E	MEAGHER

**Period of Diversion:** MAY 1 TO SEPTEMBER 30

**Diversion Means:** HEADGATE

**Period of Use:** MAY 1 TO SEPTEMBER 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	56.10		E2NE	30	7N	11E	MEAGHER
2	26.00		SWNE	30	7N	11E	MEAGHER
3	63.80		N2SE	30	7N	11E	MEAGHER
4	34.50		S2SW	30	7N	11E	MEAGHER
5	30.00		N2SW	30	7N	11E	MEAGHER
6	18.00		S2SE	30	7N	11E	MEAGHER

**Total:** 228.40



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

**Water Right Number:** 40A 205659-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** 71 RANCH LP  
 40 71 RANCH LN  
 MARTINSDALE, MT 59053-8709

**Priority Date:** JULY 13, 1898

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 2.46 CFS

THE COMBINED FLOW RATE FOR CLAIMS 40A 12513-00 AND 40A 205659-00 IS LIMITED TO 7.50 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:** 51.20

**Source Name:** LOCO 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	6	NWSW	6	6N	11E	MEAGHER

**Period of Diversion:** MAY 1 TO SEPTEMBER 30

**Diversion Means:** HEADGATE

**Period of Use:** MAY 1 TO SEPTEMBER 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	10.00		NWSW	20	7N	11E	MEAGHER
2	13.70		SWSW	20	7N	11E	MEAGHER
3	27.00		SESE	19	7N	11E	MEAGHER
4	0.50		SESWSW	19	7N	11E	MEAGHER

**Total:** 51.20