

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

CLAIMANT: McFarland White Ranch Inc.; State of
Montana Board of Land Commissioners

OBJECTOR: State of Montana Board of Land
Commissioners; McFarland White Ranch
Inc.

ON MOTION OF THE MONTANA WATER COURT

CASE 40A-0363-R-2022

40A 110020-00

40A 211602-00

40A 211604-00

40A 30002022

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

The claims listed above appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). Claims 40A 211602-00 and 40A 211604-00 received objections filed by the State of Montana Board of Land Commissioners/ TLMD ("SBLC"). Claims 40A 110020-00 and 40A 30002022 received objections filed by Claimant McFarland White Ranch Inc. Each claim also received one or more issue remark from the Department of Natural Resources and Conservation ("DNRC") identifying potential legal or factual issues with the claim. The Court called claims 40A 211602-00 and 40A 211604-00 in on its own motion to provide notice of potential issues raised by a February 11, 2002, Stipulation in Case 40A-264. The Court consolidated these claims into Case 40A-0363-R-2022 to address the issues and objections.

McFarland requested amendments to the claims to resolve the issue remarks and objections and indicated that SBLC agreed its objections were resolved if those amendments were implemented. Docs. 5.00, 9.00, 15.00.¹

Certain amendments requested by McFarland had the potential to adversely affect other water rights, so the Court required McFarland to publish notice of those changes once a week for three consecutive weeks in two newspapers of general circulation in the basin pursuant to §85-2-33(6), MCA. After publication, no parties objected to the amendments requested by McFarland.

FINDINGS OF FACT

40A 110020-00:

1. McFarland white ranch objected to correct this claim to reflect elements as adjudicated by the Water Court in Case 40A-264. The following corrections should be made to the claim:

Period of Diversion: ~~March 1 to November 15~~ **March 1 to November 19**
Period of Use: ~~March 1 to November 15~~ **March 1 to November 19**

2. The claim also received the following remark that served only to provide notice to the claimants and other water users in the Preliminary Decree ("Notice Only Remark")

¹ "Doc." refers to the docket number of a document filed in the Water Court's Full Court Enterprise Case Management system.

THE TIMELY FILED OBJECTION OF MCFARLAND WHITE RANCH INC WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE PERIOD OF USE. BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE TEMPORARY PRELIMINARY DECREE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSLEY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE

40A 211602-00

3. Part of the place of use for claim 40A 211602-00 is on State land, and SBLC objected that it should be added as an owner pursuant to the Montana Supreme Court's decision in *State. Dep't of State Lands v. Pettibone*, 216 Mont. 361, 368, 702 P.2d 948, 952 (1985). The following correction should be made as agreed by the parties (Doc. 4.00 at 3):

Owners: MacFarland White Ranch Inc.
Montana State Board of Land Commissioners/TLMD

The claim also received the following Notice Only Remarks:

CLAIM WAS NOT INCLUDED IN THE BASIN 40A TEMPORARY PRELIMINARY DECREE ISSUED 05/07/1985.

CLAIM FILED LATE 12/02/85 . IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

DITCH NAME AND POINT OF DIVERSION WERE 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.

40A 211604-00 and 40A 30002022

4. Claims 40A 211604-00 and 40A 30002022 received the following substantive issue remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 263 MINER'S INCHES DECREED IN CASE NO. 1703 , MEAGHER COUNTY. 40A 211604-00, 40A 30002022.

McFarland explains that while claim 40A 30002022 correctly claimed a decreed right, claim 40A 211604-00 was intended to reflect McFarland's historical use of high water in the source *over* the decreed amount. McFarland's historical use of highwater has

been previously recognized by the Court, and no party opposed McFarland's request to amend claim 40A 211604-00 in this Case. *See*, Case 40A-264, Order Adopting Master's Report Regarding Highwater, May 4, 2017, at 4. McFarland has supplied evidence in support of the historical flow rate and period of diversion, which further delineate this claim as a highwater claim limited by early-season use and ditch capacity. Docs. 9.00 and 15.00.

Claim 40A 211604-00 should be modified as follows to reflect ownership as agreed by the parties and to represent historical highwater use:

Owners: MacFarland White Ranch Inc.
Montana State Board of Land Commissioners/TLMD

Priority Date: ~~June 15, 1900~~ **June 30, 1973**

Type of Historical Right: ~~Decreed~~ **Use**

Flow Rate: ~~6.58 CFS~~ **24.00 CFS**

Period of Use: ~~April 15 to October 5~~ **April 15 to July 1**

Period of Diversion: ~~April 15 to October 5~~ **April 15 to July 1**

Information Remark:

THE FOLLOWING HIGHWATER RIGHTS ARE DIVERTED INTO THE MONTGOMERY FREESER, MONTGOMERY #2, MONTGOMERY #3, AND DUNNING #1 DITCHES: 40A 211603-00 AND 40A 211604-00. THE TOTAL DIVERTED FLOW RATE UNDER ANY INDIVIDUAL OR MARSHALLED COMBINATION OF THE HIGHWATER RIGHTS SHALL NOT EXCEED THE MAXIMUM DITCH CAPACITY FOR EACH RESPECTIVE DITCH.

Claim 40A 30002022 should be modified as follows, pursuant to McFarland's Objection, to reflect elements as adjudicated by the Water Court in Case 40A-264:

Period of Diversion: ~~March 1 to November 15~~ **March 1 to November 19**

Period of Use: ~~March 1 to November 15~~ **March 1 to November 19**

These claims also received one or more of the following Notice Only Remarks:

CLAIM WAS NOT INCLUDED IN THE BASIN 40A TEMPORARY PRELIMINARY DECREE ISSUED 05/07/1985.

CLAIM FILED LATE 12/02/85 . IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS

BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

DITCH NAME AND POINT OF DIVERSION WERE 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.

PRINCIPLES OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. The Water Court is not bound by settlement agreements. Settlement agreements are subject to review and approval of the Water Court. Rule 17, W.R.Adj.R. Where a settlement seeks to enlarge or expand an element of a claim, the documentation supporting the settlement must include sufficient evidence to meet the burden of proof. Rule 17(b), W.R.Adj.R.

3. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

CONCLUSIONS OF LAW

1. The Findings of Fact above are supported by a preponderance of the evidence. The claims should be modified as described above. The objections in this case are resolved.

2. The substantive issue remarks are resolved by the modifications described above and the Notice Only Remarks have served their notice purpose. The issue remarks should be removed from the claims.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court modify the claims as described above and remove the issue remarks from the claims.

A Post Decree Abstract of Water Right Claim reflecting the recommended changes is attached to this Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

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

Water Right Number: 40A 110020-00 STATEMENT OF CLAIM

Version: 6 -- POST DECREE

Status: ACTIVE

Owners: MCFARLAND WHITE RANCH INC
PO BOX 235
TWO DOT, MT 59085-0235

MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620-1601

Priority Date: JUNE 15, 1900

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 12.50 CFS

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: THE DIVERTED FLOW OF THE WATER RIGHTS LISTED BELOW MAY BE MARSHALED BETWEEN AND AMONG THE VARIOUS PLACES OF USE AND POINTS OF DIVERSION OF ANY OF THESE RIGHTS SO LONG AS SUCH MARSHALING DOES NOT ADVERSELY AFFECT ANY OTHER WATER RIGHT AND SO LONG AS THESE RIGHTS ARE HELD BY A COMMON OWNER: 40A 110018-00, 40A 110020-00, 40A 110021-00, 40A 110026-00, 40A 211043-00, AND 40A 30002022. IN THE EVENT THAT THE FLOW IN BIG ELK CREEK AND ITS TRIBUTARIES IS INSUFFICIENT TO SATISFY THE WATER RIGHTS HAVING A PRIORITY DATE PRIOR TO JULY 1, 1921, ALL RIGHTS TO MARSHAL WATER RIGHTS SHALL IMMEDIATELY CEASE.

***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:** 381.39

Source Name: BIG ELK 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		SESWSW	12	7N	13E	WHEATLAND

Period of Diversion: MARCH 1 TO NOVEMBER 19

Diversion Means: HEADGATE

Ditch Name: MONTGOMERY-FREESER DITCH

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 SPECIFIES THE ADDITION OF THE FOLLOWING REMARK: "FOR PURPOSES OF ENFORCING THE BIG ELK DECREE, THE MEANS OF DIVERSION OF ALL PARTIES SHALL BE LIMITED TO THE CARRYING CAPACITY OF THE DITCHES AT THE POINT OF DIVERSION EXISTING AS OF THE DATE OF THIS STIPULATION." A COPY OF EACH PARTY'S STATEMENT HAS BEEN ADDED TO THAT PARTY'S CLAIM FILES.

Period of Use: MARCH 1 TO NOVEMBER 19

***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	5.11		NENE	25	8N	13E	WHEATLAND
2	0.29		NWNE	25	8N	13E	WHEATLAND
3	37.52		SENE	25	8N	13E	WHEATLAND
4	11.24		SWNE	25	8N	13E	WHEATLAND
5	1.55		SENE	25	8N	13E	WHEATLAND
6	16.62		NESE	25	8N	13E	WHEATLAND
7	3.39		NWSE	25	8N	13E	WHEATLAND
8	10.14		SWSE	25	8N	13E	WHEATLAND
9	7.77		NESW	25	8N	13E	WHEATLAND
10	11.17		NWSW	25	8N	13E	WHEATLAND
11	13.53		SESW	25	8N	13E	WHEATLAND
12	22.84		SWSW	25	8N	13E	WHEATLAND
13	16.87		NENE	35	8N	13E	WHEATLAND
14	40.11		SENE	35	8N	13E	WHEATLAND
15	12.25		SWNE	35	8N	13E	WHEATLAND
16	29.08		NESE	35	8N	13E	WHEATLAND
17	15.97		NWSE	35	8N	13E	WHEATLAND
18	10.74		SESE	35	8N	13E	WHEATLAND
19	28.15		SWSE	35	8N	13E	WHEATLAND
20	12.43		NENW	36	8N	13E	WHEATLAND
21	36.98		NWNW	36	8N	13E	WHEATLAND
22	7.45		SENE	36	8N	13E	WHEATLAND
23	30.19		SWNW	36	8N	13E	WHEATLAND
Total:	381.39						

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.

110020-00 110021-00 211043-00 30002022

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

Water Right Number: 40A 211602-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: MCFARLAND WHITE RANCH INC
PO BOX 235
TWO DOT, MT 59085-0235

MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620-1601

Priority Date: JUNE 1, 1890

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 12/02/85 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.93 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: 1,061.20

Source Name: BIG ELK 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		SENESW	26	8N	13E	WHEATLAND

Period of Diversion: APRIL 15 TO OCTOBER 5

Diversion Means: HEADGATE

Ditch Name: CHARLES E. DUNNING DITCH NO. 1

2		NWSENW	35	8N	13E	WHEATLAND
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Period of Diversion: APRIL 15 TO OCTOBER 5

Diversion Means: HEADGATE

3		NWNENW	2	7N	13E	WHEATLAND
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Period of Diversion: APRIL 15 TO OCTOBER 5

Diversion Means: HEADGATE
Ditch Name: MONTGOMERY DITCH NO. 2
 4 NWSWSE 2 7N 13E WHEATLAND
Period of Diversion: APRIL 15 TO OCTOBER 5
Diversion Means: HEADGATE
Ditch Name: MONTGOMERY DITCH NO.3
 5 SESWSW 12 7N 13E WHEATLAND
Period of Diversion: APRIL 15 TO OCTOBER 5
Diversion Means: HEADGATE
Ditch Name: MONTGOMERY-FREESER DITCH
 6 - SECONDARY NESENW 35 8N 13E WHEATLAND
Period of Diversion: APRIL 15 TO OCTOBER 5
Diversion Means: PUMP
 7 - SECONDARY NWSESW 35 8N 13E WHEATLAND
Period of Diversion: APRIL 15 TO OCTOBER 5
Diversion Means: PUMP

WATER DIVERTED FROM BIG ELK CREEK IS DIVERTED VIA A ROCK DAM INTO A DITCH. THE DITCH CONVEYS WATER A SHORT DISTANCE TO A SECONDARY POINT OF DIVERSION (A PUMP) IN THE NESENW SEC 35 TWP 8N RGE 13E WHEATLAND COUNTY.

WATER DIVERTED FROM BIG ELK CREEK IS DIVERTED VIA MONGOMERY DITCH NO. 2 WHICH CONVEYS WATER TO A SECONDARY POINT OF DIVERSION (A PUMP) IN THE NWSESW SEC 35 TWP 8N RGE 13E WHEATLAND COUNTY.

Period of Use: APRIL 15 TO OCTOBER 5

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	45.00		N2	2	7N	13E	WHEATLAND
2	80.00		S2	24	8N	13E	WHEATLAND
3	56.00		NE	25	8N	13E	WHEATLAND
4	70.00		NW	25	8N	13E	WHEATLAND
5	65.00		SE	25	8N	13E	WHEATLAND
6	34.00		SW	25	8N	13E	WHEATLAND
7	35.00		NE	26	8N	13E	WHEATLAND
8	188.00		S2	26	8N	13E	WHEATLAND
9	65.00		E2	34	8N	13E	WHEATLAND
10	172.00		E2	35	8N	13E	WHEATLAND
11	20.00		NW	35	8N	13E	WHEATLAND
12	119.00		SW	35	8N	13E	WHEATLAND
13	112.20		N2	36	8N	13E	WHEATLAND
Total:	<u>1061.20</u>						

SEE WATER RIGHT FILE FOR SUBDIVISION INFORMATION.

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

Water Right Number: 40A 211604-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: MCFARLAND WHITE RANCH INC
PO BOX 235
TWO DOT, MT 59085-0235

MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620-1601

Priority Date: JUNE 30, 1973

CLAIM FILED LATE 12/02/85 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 24.00 CFS

THE FOLLOWING HIGHWATER RIGHTS ARE DIVERTED INTO THE MONTGOMERY FREESER, MONTGOMERY #2, MONTGOMERY #3, AND DUNNING #1 DITCHES: 40A 211603-00 AND 40A 211604-00. THE TOTAL DIVERTED FLOW RATE UNDER ANY INDIVIDUAL OR MARSHALLED COMBINATION OF THE HIGHWATER RIGHTS SHALL NOT EXCEED THE MAXIMUM DITCH CAPACITY FOR EACH RESPECTIVE DITCH.

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: 1,061.20

Source Name: BIG ELK 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		SENE SW	26	8N	13E	WHEATLAND

Period of Diversion: APRIL 15 TO JULY 1

Diversion Means: HEADGATE

Ditch Name: CHARLES E. DUNNING DITCH NO. 1

2		NWSE NW	35	8N	13E	WHEATLAND
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Period of Diversion: APRIL 15 TO JULY 1

Diversion Means: HEADGATE

3	NWNENW	2	7N	13E	WHEATLAND
Period of Diversion:	APRIL 15 TO JULY 1				
Diversion Means:	HEADGATE				
Ditch Name:	MONTGOMERY DITCH NO. 2				
4	NWSWSE	2	7N	13E	WHEATLAND
Period of Diversion:	APRIL 15 TO JULY 1				
Diversion Means:	HEADGATE				
5	SESWSW	12	7N	13E	WHEATLAND
Period of Diversion:	APRIL 15 TO JULY 1				
Diversion Means:	HEADGATE				
Ditch Name:	MONTGOMERY-FREESER DITCH				
6 - SECONDARY	NESENW	35	8N	13E	WHEATLAND
Period of Diversion:	APRIL 15 TO JULY 1				
Diversion Means:	PUMP				
7 - SECONDARY	NWSESW	35	8N	13E	WHEATLAND
Period of Diversion:	APRIL 15 TO JULY 1				
Diversion Means:	PUMP				

WATER DIVERTED FROM BIG ELK CREEK IS DIVERTED VIA A ROCK DAM INTO A DITCH. THE DITCH CONVEYS WATER A SHORT DISTANCE TO A SECONDARY POINT OF DIVERSION (A PUMP) IN THE NESENW SEC 35 TWP 8N RGE 13E WHEATLAND COUNTY.

WATER DIVERTED FROM BIG ELK CREEK IS DIVERTED VIA MONGOMERY DITCH NO. 2 WHICH CONVEYS WATER TO A SECONDARY POINT OF DIVERSION (A PUMP) IN THE NWSESW SEC 35 TWP 8N RGE 13E WHEATLAND COUNTY.

Period of Use: APRIL 15 TO JULY 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	45.00		N2	2	7N	13E	WHEATLAND
2	80.00		S2	24	8N	13E	WHEATLAND
3	56.00		NE	25	8N	13E	WHEATLAND
4	70.00		NW	25	8N	13E	WHEATLAND
5	65.00		SE	25	8N	13E	WHEATLAND
6	34.00		SW	25	8N	13E	WHEATLAND
7	35.00		NE	26	8N	13E	WHEATLAND
8	188.00		S2	26	8N	13E	WHEATLAND
9	65.00		E2	34	8N	13E	WHEATLAND
10	172.00		E2	35	8N	13E	WHEATLAND
11	20.00		NW	35	8N	13E	WHEATLAND
12	119.00		SW	35	8N	13E	WHEATLAND
13	112.20		N2	36	8N	13E	WHEATLAND
Total:	<u>1061.20</u>						

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

Water Right Number: 40A 30002022 STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: ACTIVE

Owners: MCFARLAND WHITE RANCH INC
PO BOX 235
TWO DOT, MT 59085-0235

MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620-1601

Priority Date: JUNE 15, 1900

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 6.58 CFS

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 INCLUDES THE FOLLOWING PROVISION: THE DIVERTED FLOW OF THE WATER RIGHTS LISTED BELOW MAY BE MARSHALED BETWEEN AND AMONG THE VARIOUS PLACES OF USE AND POINTS OF DIVERSION OF ANY OF THESE RIGHTS SO LONG AS SUCH MARSHALING DOES NOT ADVERSELY AFFECT ANY OTHER WATER RIGHT AND SO LONG AS THESE RIGHTS ARE HELD BY A COMMON OWNER: 40A 110018-00, 40A 110020-00, 40A 110021-00, 40A 110026-00, 40A 211043-00, AND 40A 30002022. IN THE EVENT THAT THE FLOW IN BIG ELK CREEK AND ITS TRIBUTARIES IS INSUFFICIENT TO SATISFY THE WATER RIGHTS HAVING A PRIORITY DATE PRIOR TO JULY 1, 1921, ALL RIGHTS TO MARSHAL WATER RIGHTS SHALL IMMEDIATELY CEASE.

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: 381.39

Source Name: BIG ELK 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		SESWSW	12	7N	13E	WHEATLAND

Period of Diversion: MARCH 1 TO NOVEMBER 19

Diversion Means: HEADGATE

Ditch Name: MONTGOMERY-FREESER DITCH

THE STIPULATION FILED ON FEBRUARY 11, 2002 IN CASE 40A-264 SPECIFIES THE ADDITION OF THE FOLLOWING REMARK: "FOR PURPOSES OF ENFORCING THE BIG ELK DECREE, THE MEANS OF DIVERSION OF ALL PARTIES SHALL BE LIMITED TO THE CARRYING CAPACITY OF THE DITCHES AT THE POINT OF DIVERSION EXISTING AS OF THE DATE OF THIS STIPULATION." A COPY OF EACH PARTY'S STATEMENT HAS BEEN ADDED TO THAT PARTY'S CLAIM FILES.

Period of Use: MARCH 1 TO NOVEMBER 19

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	5.11		NENE	25	8N	13E	WHEATLAND
2	0.29		NWNE	25	8N	13E	WHEATLAND
3	37.52		SENE	25	8N	13E	WHEATLAND
4	11.24		SWNE	25	8N	13E	WHEATLAND
5	1.55		SENE	25	8N	13E	WHEATLAND
6	16.62		NESE	25	8N	13E	WHEATLAND
7	3.39		NWSE	25	8N	13E	WHEATLAND
8	10.14		SWSE	25	8N	13E	WHEATLAND
9	7.77		NESW	25	8N	13E	WHEATLAND
10	11.17		NWSW	25	8N	13E	WHEATLAND
11	13.53		SESW	25	8N	13E	WHEATLAND
12	22.84		SWSW	25	8N	13E	WHEATLAND
13	16.87		NENE	35	8N	13E	WHEATLAND
14	40.11		SENE	35	8N	13E	WHEATLAND
15	12.25		SWNE	35	8N	13E	WHEATLAND
16	29.08		NESE	35	8N	13E	WHEATLAND
17	15.97		NWSE	35	8N	13E	WHEATLAND
18	10.74		SESE	35	8N	13E	WHEATLAND
19	28.15		SWSE	35	8N	13E	WHEATLAND
20	12.43		NENW	36	8N	13E	WHEATLAND
21	36.98		NWNW	36	8N	13E	WHEATLAND
22	7.45		SENE	36	8N	13E	WHEATLAND
23	30.19		SWNW	36	8N	13E	WHEATLAND
Total:	381.39						

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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