

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

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

CLAIMANTS: William ES Bundy; Kayla A. Byrd; Patsy
Johnson Juhl

OBJECTORS: William ES Bundy; Kayla A. Byrd; Patsy
Johnson Juhl

CASE 40A-0101-R-2022
40A 204311-00
40A 204312-00
40A 30160086
40A 30160087

ORDER APPROVING STIPULATION

The Water Court included water right claims 40A 204311-00 and 40A 204312-00 in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A).

William ES Bundy, Kayla A. Byrd, and Patsy Johnson Juhl (“Claimants”) jointly own the claims. The claims received issue remarks and objections from the Claimants.

The Preliminary Decree describes claim 40A 204311-00 as a filed right to use water from Goulding Creek for irrigation with a priority date of June 23, 1931. Goulding Creek is a tributary of the Musselshell River in Musselshell County. The abstract for claim 40A 204311-00 includes the description of an onstream reservoir called Robson Reservoir.

The Preliminary Decree describes claim 40A 204312-00 as a filed right to use water from a spring of an unnamed tributary of Goulding Creek for irrigation with a priority date of June 23, 1931.

The preliminary decree abstract for claim 40A 204311-00 includes the following issue remarks:

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 204311-00, 40A 204312-00.

POINT OF DIVERSION, MEANS OF DIVERSION, AND RESERVOIR RECORD 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.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 20 TIMES THE CAPACITY OF THE RESERVOIR.

The preliminary decree abstracts for claim 40A 204312-00 include the following issue remarks:

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 204311-00, 40A 204312-00.

THE PRIORITY DATE MAY BE INCORRECT. THE NOTICE OF WATER RIGHT APPLIES TO CLAIM 40A 204311-00.

THE FLOW RATE MAY BE INCORRECT. THE PUMP CAPACITY IS CLAIMED AT 750 GPM.

Claimants and objectors Kayla A. Byrd and William E.S. Bundy objected to the maximum acres, ownership, and place of use of both claims. Claimant and objector Patsy Johnson Juhl objected to the flow rate, maximum acres, ownership, place of use, and ownership. The Court consolidated the claims into this case to resolve the issue remarks and self-objections.

This case has been through a fairly lengthy procedural history since it was consolidated in 2022. On November 18, 2022, the Department of Natural Resources and

Conservation (“DNRC”) performed a field investigation. Based on the investigation and file review DNRC prepared several memorandums with recommendations. The parties then participated in a mediation that was unsuccessful. The Court then issued a hearing track scheduling order and set a July 24, 2024 hearing date, to be preceded by a July 17, 2024, prehearing conference. The parties did not file a prehearing order so the Court vacated the hearing and set a new settlement deadline.

On July 25, 2024, counsel for claimant and objector Patsy Johnson Juhl filed a stipulation (the “Stipulation”) executed by Bundy and Byrd. (Doc. 40.00)¹. Counsel for Juhl also filed a status report stating Juhl “will submit her signature page within the next 1-2 days.” (Doc. 41.00). No signature page from Juhl was filed so the Court set a new filing deadline for the signature page and to file the consultant report referenced in the Stipulation. Juhl filed the necessary documents on November 8, 2024.

DISCUSSION

Settlement stipulations are contracts that set the terms by which parties agree to resolve objections. A settlement stipulation may include a claimant's legally binding commitment to modify claims to resolve objections and issue remarks, and an objector's agreement to withdraw objections conditioned upon the Court's acceptance of the claim modifications. In determining whether to accept claim modifications proposed in the stipulation, the Court applies Rule 17, W.R.Adj.R. Under Rule 17(a), settlement stipulations are subject to Water Court review and approval when they resolve issues within the Court's jurisdiction. See also, § 85-2-233(5)(b), MCA.

The Stipulation meets this standard. Under the terms of the Stipulation, the parties agree to reduce the volume of the reservoir to cover two fills plus evaporative loss. This reduction resolves the reservoir volume remark because it is consistent with the DNRC guidelines pertaining to issue remarks for reservoir volume. Rule 15(h)(5)(ii), W.R.C.E.R.

¹ “Doc.” Numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

The parties further agree to divide the water use between each other. Although the parties did not expressly ask the Court to split the claims, the Court concludes splitting them will obviate future disputes while at the same time preserving the parties' agreement under the Stipulation. Pursuant to its authority under Rule 26, W.R.Adj.R. (authorizing the Court to split claims "upon request of the claimants, or on its own initiative"), the Court authorizes the creation of claim 40A 30160086 to include Juhl's portion of claim 40A 204311-00, and also authorizes the creation of claim 40A 30160087 to include Juhl's portion of claim 40A 204312-00 as set forth in the Stipulation. The remaining portion of claims 40A 204311-00 and 40A 204312-00 remain with Bundy and Byrd.

The following summarizes the parties' agreement under the terms of the Stipulation, as reflected in the split claims:

40A 204311-00

Owners: KAYLA A. BYRD and WILLIAM ES BUNDY

Priority Date: JUNE 23, 1931

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

Volume: 32.21 AC-FT

Point 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>
		NWSWNW	20	T6N	R25E	MUSSELSHELL

Diversion Means: DAM

Reservoir: ONSTREAM

Capacity 13.68 AC-FT²

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	8.00		N2N2SE	19	T6N	R25E	MUSSELSHELL
2	30.00		NE	19	T6N	R25E	MUSSELSHELL

Total: 38.00

40A 30160086

Owners: PATSY JOHNSON JUHL

Priority Date: JUNE 23, 1931

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

Volume: 15.15 AC FT

Point of Diversion:

² The remainder of the reservoir record elements are the same as on the preliminary decree abstract for claims 40A 204311-00 and 40A 30160086.

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
		NWSWNW	20	T6N	R25E	MUSSELSHELL

Diversion Means: DAM
 Reservoir: ONSTREAM
 Capacity: 13.68 AC FT

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>
<u>1</u>	<u>18.00</u>		S2NW	20	T6N	R25E	MUSSELSHELL

Total: 18.00

40A 204312-00

Owners: KAYLA A. BYRD and WILLIAM ES BUNDY

Priority Date: JUNE 23, 1931

Flow Rate: 1.00 CFS

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

Point 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>
		NWSWNW	20	T6N	R25E	MUSSELSHELL

Diversion Means: PUMP

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	8.00		N2N2SE	19	T6N	R25E	MUSSELSHELL
<u>2</u>	<u>30.00</u>		NE	19	T6N	R25E	MUSSELSHELL

Total: 38.00

40A 30160087

Owners: PATSY JOHNSON JUHL

Priority Date: JUNE 23, 1931

Flow Rate: 1.00 CFS

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

Point 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>
		NWSWNW	20	T6N	R25E	MUSSELSHELL

Diversion Means: PUMP

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>
<u>1</u>	<u>18.00</u>		S2NW	20	T6N	R25E	MUSSELSHELL

Total: 18.00

The Stipulation and splitting the claims resolves the objections and the issue remarks. The Court also removes the supplemental rights remark from the claims as it does not aid in administering these rights. The Court also adds an information remark that

references the Stipulation, as filed in this case, to the extent it may be necessary for future administration of the rights.

ORDER

Therefore, it is ORDERED that 40A 204311-00 and 40A 204312-00 are modified per this Order. It is further ORDERED claims 40A 30160086 and 40A 30160087 are created per this Order.

As the objections and issue remarks are resolved, these proceedings are closed. Post decree abstracts of the claims are served with this Order to confirm the modifications have been made in the State's centralized water right record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

William ES Bundy
Kayla A. Byrd
911 Goulding Creek Rd
Roundup, MT 59072

Service via Electronic Mail:

Colleen Coyle
Coyle Law Firm
PO Box 1326
Bozeman, MT 59771
(406) 551-4868
(406) 570-2740 (Cell)
colleen@coylelawmt.com

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

Water Right Number: 40A 204311-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: WILLIAM ES BUNDY
911 GOULDING CREEK RD
ROUNDUP, MT 59072

KAYLA A BYRD
911 GOULDING CREEK RD
ROUNDUP, MT 59072

Priority Date: JUNE 23, 1931

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

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

Volume: 32.21 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 38.00

Source Name: GOULDING 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		NWSWNW	20	6N	25E	MUSSELSHELL

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

MEANS OF DIVERSION INCLUDES A PUMP.

Reservoir: ONSTREAM **Reservoir Name:** ROBSON

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNWNW	20	6N	25E	MUSSELSHELL

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 9.50 FEET

Surface Area: 3.60 ACRES

Capacity: 13.68 ACRE-FEET

Period of Use: APRIL 15 TO OCTOBER 15

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	8.00		N2N2SE	19	6N	25E	MUSSELSHELL
2	30.00		NE	19	6N	25E	MUSSELSHELL
Total:	<u>38.00</u>						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME POINT OF DIVERSION AND RESERVOIR.

204311-00 204312-00 30160086 30160087

SPLIT CLAIM NO. 40A 30160086 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

THIS WATER RIGHT IS SUBJECT TO THE TERMS OF A PRIVATE AGREEMENT FILED IN WATER COURT CASE 40A-0101-R-2022.

AUTHORIZATION TO CHANGE THE POINT OF DIVERSION AND PLACE OF STORAGE ISSUED 11/07/1990 COMPLETED 03/04/1992. ABSTRACT REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY, 1973. SEE 40A 204311-00.

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

Water Right Number: 40A 204312-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: WILLIAM ES BUNDY
911 GOULDING CREEK RD
ROUNDUP, MT 59072

KAYLA A BYRD
911 GOULDING CREEK RD
ROUNDUP, MT 59072

Priority Date: JUNE 23, 1931

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 1.00 CFS

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

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 38.00

Source Name: SPRING, UNNAMED TRIBUTARY OF GOULDING CREEK

Source Type: GROUNDWATER

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		NWSWNW	20	6N	25E	MUSSELSHELL

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: PUMP

Period of Use: APRIL 15 TO OCTOBER 15

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	8.00		N2N2SE	19	6N	25E	MUSSELSHELL
2	30.00		NE	19	6N	25E	MUSSELSHELL

Total: 38.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME POINT OF DIVERSION AND RESERVOIR.

204311-00 204312-00 30160086 30160087

SPLIT CLAIM NO. 40A 30160087 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

THIS WATER RIGHT IS SUBJECT TO THE TERMS OF A PRIVATE AGREEMENT FILED IN WATER COURT CASE 40A-0101-R-2022.

AUTHORIZATION TO CHANGE THE POINT OF DIVERSION AND PLACE OF STORAGE ISSUED 11/07/1990
COMPLETED 03/04/1992. ABSTRACT REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY, 1973. SEE 40A 204311-
00.

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

Water Right Number: 40A 30160086 STATEMENT OF CLAIM
Version: 1 -- SPLIT POST DECREE
Status: ACTIVE

Owners: PATSY JOHNSON JUHL
1003 GOULDING CREEK RD
ROUNDUP, MT 59072-6517

Priority Date: JUNE 23, 1931

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

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

Volume: 15.15 AC-FT

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 18.00

Source Name: GOULDING 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		NWSWNW	20	6N	25E	MUSSELSHELL

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM
MEANS OF DIVERSION INCLUDES A PUMP.

Reservoir: ONSTREAM **Reservoir Name:** ROBSON

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNWNW	20	6N	25E	MUSSELSHELL

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 9.50 FEET

Surface Area: 3.60 ACRES

Capacity: 13.68 ACRE-FEET

Period of Use: APRIL 15 TO OCTOBER 15

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	18.00		S2NW	20	6N	25E	MUSSELSHELL

Total: 18.00

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME POINT OF DIVERSION AND RESERVOIR.

204311-00

204312-00

30160086

30160087

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 40A 204311-00.

THIS WATER RIGHT IS SUBJECT TO THE TERMS OF A PRIVATE AGREEMENT FILED IN WATER COURT CASE 40A-0101-R-2022.

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

Water Right Number: 40A 30160087 STATEMENT OF CLAIM
Version: 1 -- SPLIT POST DECREE
Status: ACTIVE

Owners: PATSY JOHNSON JUHL
1003 GOULDING CREEK RD
ROUNDUP, MT 59072-6517

Priority Date: JUNE 23, 1931

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 1.00 CFS

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

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 18.00

Source Name: SPRING, UNNAMED TRIBUTARY OF GOULDING CREEK

Source Type: GROUNDWATER

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		NWSWNW	20	6N	25E	MUSSELSHELL

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: PUMP

Period of Use: APRIL 15 TO OCTOBER 15

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	18.00		S2NW	20	6N	25E	MUSSELSHELL
Total:	18.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THE RIGHTS SHARE THE SAME POINT OF DIVERSION AND RESERVOIR.

204311-00 204312-00 30160086 30160087

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 40A 204312-00.

THIS WATER RIGHT IS SUBJECT TO THE TERMS OF A PRIVATE AGREEMENT FILED IN WATER COURT CASE 40A-0101-R-2022.