

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

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

CLAIMANTS: Richard B. Ingersoll; Cottonwood Cabins LLC;
71 Ranch LP

CASE 40A-0379-R-2022
40A 198330-00
40A 198331-00
40A 205649-00

ORDER ADOPTING STIPULATION AND CLOSING CASE

Claims 40A 198330-00, 40A 198331-00, and 40A 205649-00 were included in the Preliminary Decree for the Musselshell River above Roundup, Basin 40A, issued June 7, 2017. All three claims are for irrigation from Cottonwood Creek with an August 1, 1884 priority date. Claim 40A 198330-00, owned by Richard B. Ingersoll, has a 3.07 CFS flow rate. Claim 40A 198331-00, owned by Cottonwood Cabins LLC, has a 436.39 GPM flow rate. Claim 40A 205649-00, owned by 71 Ranch LP, has a 50.00 CFS flow rate.

The claims received an issue remark noting that 40A 198330-00, 40A 198331-00, and 40A 205649-00 are based on the same filed appropriation and that the combined flow rate for the group of claims exceeds the total of the original appropriation. On February 26, 2026, the parties filed a Stipulation to resolve the issue remark. (Doc. 90.00). This order addresses the Stipulation and closes the case.

APPLICABLE LAW

Pursuant to Rule 7 of the Water Right Adjudication Rules, the Water Court is required to resolve all issue remarks based on Sections 85-2-247 through 85-2-250, Mont.

Code Ann. The Court may resolve issue remarks based on information submitted by the Department of Natural Resources and Conservation (“DNRC”) or any other data and information it obtains. § 85-2-248(2), MCA. Based on Rule 17(a), W.R.Adj.R., when parties file settlement agreements to resolve issues in a case, the Water Court is not bound by those agreements. Any settlements reached by parties are subject to review and approval by the Water Court. *Id.*

Water rights are distributed based on the most recent Water Court decree, as modified in adjudication proceedings. *Water Comm’r to Measure & Distribute Water on Beaver Creek Within Basin 411 v. Dodge*, 2026 MT 16, ¶ 14, 426 Mont. 184, 583 P.3d 938 (citing §§ 85-2-406(4), 85-2-227(1), MCA). A water commissioner’s authority is strictly derived from the most recent Water Court decree and its adjudicated terms. *Id.* ¶ 32. Thus, “[any information] necessary to fully define the nature and extent of the right” shall be included in a final decree issued by the Water Court. § 85-2-234(6)(i), MCA.

APPLICATION

The parties filed a Stipulation to resolve the issue remark in this case. (Doc. 90.00). The Stipulation contains various terms, including one modification to the elements of the claims. The parties agreed the claims should be corrected from “filed” rights based on a Notice of Appropriation to “use” rights and, therefore, the priority dates and flow rates were agreed to remain as they appeared in the Preliminary Decree.

The Stipulation also contains terms regarding construction and maintenance of ditches and regarding how the rights should be measured and distributed. Pursuant to the terms of the Stipulation, an information remark should be added to the abstracts of the claims referencing the claims are subject to a private agreement that will be available in the claim files and enforceable if adopted by the Court. The parties agreed the remark needs to be included in distribution tabulations provided to water commissioners.

With the Stipulation, the parties filed a Memorandum from Russ Radliff, Senior Water Rights Specialist at HydroSolutions, and a Memorandum from Lee Yelin, Senior Water Rights Specialist, Water Rights Inc. The Memoranda provide explanation of the evidence supporting the claims as “use” rights. As documented in patent files, homesteading of the area began around 1874, before the 1884 priority date. Further, the

priority dates are prior to the notice requirements enacted in the Water Rights Act of 1885.

The Stipulation is acceptable to resolve the issues in this case pursuant to Rule 17(a), W.R.Adj.R. The Memoranda provided in support of the Stipulation provide sufficient support to resolve the issue remarks, modify the type of rights from “filed” to “use,” and keep the flow rates and priority dates as they appeared in the Preliminary Decree. *See* § 85-2-248(2), MCA. The information remarks requested to be added to the abstracts and included on tabulations are necessary to distribution of the rights. *See* § 85-2-234(6)(i), MCA; *Dodge*, ¶ 32.

Therefore, it is

ORDERED that the Stipulation is ADOPTED. The issue remarks are removed from the abstracts of the claims, the claims are modified to “use” rights, and information remarks are added to the abstracts as requested by the parties.

ORDERED that proceedings in this case are CLOSED.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail

Kimberly Durham
DURHAM LAW PC
kimberly@durhamlawpc.com

Colleen Coyle
Coyle Law Firm
colleen@coylelawmt.com

Richard C. Tappan Jr.
Connlan W. Whyte
Tappan Law Firm PLLC
rtappan@tappanlawfirm.com
cwhyte@tappanlawfirm.com
office@tappanlawfirm.com

Vuko J Voyich
Anderson & Voyich
Attorneys at Law PLLC
office@andersonandvoyich.com

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

Water Right Number: 40A 198330-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: RICHARD B INGERSOLL
6030 S 800 EAST
ZIONSVILLE, IN 46077

Priority Date: AUGUST 1, 1884

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 3.07 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:** 81.00

Source Name: COTTONWOOD 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		NWNWNW	31	8N	11E	MEAGHER

Period of Diversion: MAY 1 TO SEPTEMBER 15

Diversion Means: HEADGATE

Period of Use: MAY 1 TO SEPTEMBER 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	19.00		SWNW	30	8N	11E	MEAGHER
2	30.00		NWSW	30	8N	11E	MEAGHER
3	32.00		SWSW	30	8N	11E	MEAGHER

Total: 81.00

Remarks:

THIS WATER RIGHT IS SUBJECT TO A PRIVATE AGREEMENT. A COPY OF THE AGREEMENT IS IN THE CLAIM FILE AND WATER COURT CASE FILE 40A-0379-R-2022.

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

Water Right Number: 40A 198331-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: COTTONWOOD CABINS LLC
48 EDEN LN
STAMFORD, CT 06907

Priority Date: AUGUST 1, 1884

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 436.39 GPM

***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:** 25.67

Source Name: COTTONWOOD 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		NWNWNW	31	8N	11E	MEAGHER

Period of Diversion: MAY 1 TO SEPTEMBER 15

Diversion Means: HEADGATE

Period of Use: MAY 1 TO SEPTEMBER 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	11.90		SWSW	19	8N	11E	MEAGHER
2	13.77		E2NWNW	30	8N	11E	MEAGHER

Total: 25.67

Remarks:

THIS WATER RIGHT IS SUBJECT TO A PRIVATE AGREEMENT. A COPY OF THE AGREEMENT IS IN THE CLAIM FILE AND WATER COURT CASE FILE 40A-0379-R-2022.

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

Water Right Number: 40A 205649-00 STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: ACTIVE

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

Priority Date: AUGUST 1, 1884

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 50.00 CFS

***Volume:** 8,199.95 AC-FT

THE WATER COURT HAS DETERMINED THAT A VOLUME QUANTIFICATION IS REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 964.70

Source Name: COTTONWOOD 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		NWSESW	31	8N	11E	MEAGHER

Period of Diversion: APRIL 15 TO SEPTEMBER 30

Diversion Means: HEADGATE

Period of Use: APRIL 15 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	8.00		SENE	24	8N	10E	MEAGHER
2	21.00		NESE	24	8N	10E	MEAGHER
3	2.00		SESE	24	8N	10E	MEAGHER
4	20.00		SENE	15	8N	11E	MEAGHER
5	22.50		SWNE	15	8N	11E	MEAGHER
6	3.70		SENE	15	8N	11E	MEAGHER
7	6.00		N2NESE	15	8N	11E	MEAGHER
8	33.50		NWSE	15	8N	11E	MEAGHER
9	36.10		S2SE	15	8N	11E	MEAGHER
10	34.40		NESW	15	8N	11E	MEAGHER
11	30.50		NWSW	15	8N	11E	MEAGHER
12	5.00		SESW	15	8N	11E	MEAGHER
13	3.00		SWSW	15	8N	11E	MEAGHER

14	3.00	S2SWNW	17	8N	11E	MEAGHER
15	84.00	SE	17	8N	11E	MEAGHER
16	98.00	SW	17	8N	11E	MEAGHER
17	3.00	E2NESE	18	8N	11E	MEAGHER
18	74.00	E2NE	19	8N	11E	MEAGHER
19	4.00	NWNE	19	8N	11E	MEAGHER
20	13.00	SWNE	19	8N	11E	MEAGHER
21	14.00	NWNW	19	8N	11E	MEAGHER
22	26.00	SWNW	19	8N	11E	MEAGHER
23	26.00	E2SE	19	8N	11E	MEAGHER
24	32.00	NWSE	19	8N	11E	MEAGHER
25	38.00	SWSE	19	8N	11E	MEAGHER
26	23.00	NESW	19	8N	11E	MEAGHER
27	17.00	NWSW	19	8N	11E	MEAGHER
28	10.00	SESW	19	8N	11E	MEAGHER
29	1.00	SWSW	19	8N	11E	MEAGHER
30	10.00	NENE	20	8N	11E	MEAGHER
31	17.00	NWNE	20	8N	11E	MEAGHER
32	2.00	SWNE	20	8N	11E	MEAGHER
33	28.00	N2NW	20	8N	11E	MEAGHER
34	37.00	SENW	20	8N	11E	MEAGHER
35	28.00	SWNW	20	8N	11E	MEAGHER
36	35.00	NWSW	20	8N	11E	MEAGHER
37	2.00	SWSW	20	8N	11E	MEAGHER
38	3.00	NENE	30	8N	11E	MEAGHER
39	36.00	NWNE	30	8N	11E	MEAGHER
40	18.00	SWNE	30	8N	11E	MEAGHER
41	8.00	NENW	30	8N	11E	MEAGHER
42	16.00	SENW	30	8N	11E	MEAGHER
43	11.00	NWSE	30	8N	11E	MEAGHER
44	15.00	NESW	30	8N	11E	MEAGHER
45	7.00	SESW	30	8N	11E	MEAGHER
Total:						964.70

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.

205649-00 205652-00 205653-00 205654-00 205655-00

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.

205646-00 205649-00

THIS WATER RIGHT IS SUBJECT TO A PRIVATE AGREEMENT. A COPY OF THE AGREEMENT IS IN THE CLAIM FILE AND WATER COURT CASE FILE 40A-0379-R-2022.