

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270 (In-state only)
(406) 586-4364
Fax (406) 522-4131

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

IN THE MATTER OF THE ADJUDICATION OF THE) **CASE 40A-115**
EXISTING RIGHTS TO THE USE OF ALL THE) 40A-W-151880-00
WATER, BOTH SURFACE AND UNDERGROUND)
WITHIN THE MUSSELSHELL RIVER DRAINAGE AREA) **Implied Claim:**
ABOVE ROUNDUP, INCLUDING ALL TRIBUTARIES) 40A-W-214226-00
OF THE MUSSELSHELL RIVER ABOVE ROUNDUP)
IN WHEATLAND, GOLDEN VALLEY, MEAGHER,)
FERGUS, MUSSELSHELL, SWEET GRASS, PARK,)
YELLOWSTONE, AND STILLWATER COUNTIES,)
MONTANA.)
_____)

CLAIMANT: Eliasson Ranch Company

OBJECTOR: Eliasson Ranch Company
Maria Rodeghiero and Bruno Rodeghiero

FILED
OCT 28 2004
Montana Water Court

SUPPLEMENTAL ORDER AMENDING AND ADOPTING MASTER'S REPORT

On June 28, 2004, the Water Court issued an Order Amending and Adopting Master's Report. On October 5, 2004, the Eliasson Ranch Company, through attorney Jason L. Harkins, timely filed its Objection.

The Eliasson Ranch Company contends that the 5.5 cfs of Musselshell River water identified in the two water right claims in this case were historically used at the same time and not separately as the Court concluded on page 6 of its June 28 Order. Attached to the October 5 Objection were two affidavits, one from Gary H. Eliasson and one from Bruno Rodeghiero.¹ Both affiants affirmed the contention that the two claims in this case were historically used (5.5 cfs for one claim on the east side of the Musselshell River and 5.5 cfs for the other claim on the west side

¹ The Eliasson Ranch Objection incorrectly states that an affidavit of Joseph Vescovi was attached to the Objection. As noted earlier, only two affidavits were attached, one from Gary Eliasson and one from Bruno Rodeghiero.

of the Musselshell River) at the same time and that the Court's restriction on the two claims to an alternating use does not reflect the actual historical beneficial use of the two water right claims.

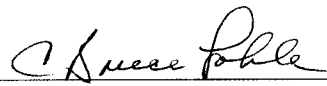
The two affidavits are accepted to supplement the record and the Court's June 28, 2004 Order is modified as follows.

1) The first full paragraph on page 6 beginning with "However," and ending with "claims" is deleted.

2) The Court's information remark, "THE COMBINED DIVERTED FLOW RATE OF CLAIMS 40A-W-214226-00 AND 40A-W-151880-00-00 SHALL NOT EXCEED A TOTAL OF 5.50 CFS", found on pages 7 and 8 of the Order and on the two abstracts attached to that Order is deleted. Accordingly, it is

ORDERED that an **Abstract of Water Right Claim as Modified by the Montana Water Court** be served with this Order to confirm that the recommendations set forth in the Master's Report, as AMENDED by the Court's June 28, 2004 Order and as SUPPLEMENTED by this Order, have been adopted for claims 40A-W-151880-00 and 40A-W-214226-00.

DATED this 28 day of OCTOBER, 2004.



C. Bruce Loble
Chief Water Judge

SERVICE LIST

Eliasson Ranch Company
16393 Highway 12 West
Roundup MT 59072

Gary Eliasson
PO Box 389
Roundup MT 59072

Donald J. Eliasson
16393 Highway 12 West
Roundup MT 59072

Jason L. Harkins, Attorney
Harkins Law Firm, P.C.
3021 6th Avenue N., Suite 205
Billings MT 59101

Sutherland Living Trust
4394 Bonita Road
Bonita CA 91902

Maria Rodeghiero
Bruno Rodeghiero
PO Box 37
Roundup MT 59072

Roy C. Rodeghiero
PO Box 37
Roundup MT 59072

**ABSTRACT OF WATER RIGHT CLAIM
AS MODIFIED BY THE WATER COURT**

**MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A**

IMPORTANT NOTICE

AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.

Water Right Number: 40A 151880-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ELIASSON RANCH CO
PO BOX 389
16365 HWY 12 W
ROUNDUP, MT 59072 0389

SUTHERLAND LIVING TRUST
ROBERT R SUTHERLAND, TRUSTEE
4394 BONITA RD
BONITA, CA 91902

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT MAY BE SPLIT INTO SEPARATE WATER RIGHTS AFTER FINAL DECREE UPON REQUEST OF THE OWNERS.

Priority Date: MAY 1, 1897

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 5.50 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:** 72.60

Source: MUSSELSHELL RIVER

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		SWSWSE	23	7N	24E	MUSSELSHELL
Diversion Means: DIVERSION DAM						
2		NWNWSW	4	7N	25E	MUSSELSHELL
Diversion Means: PUMP						

DITCH NAME FOR DIVERSION NO. 01 IS: NADERMAN DITCH.

Period of Use: MAY 15 to SEPTEMBER 24

***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	25.30		E2NE	5	7N	25E	MUSSELSHELL
2	47.30		N2NW	4	7N	25E	MUSSELSHELL
Total:	72.60						

ENTIRE PLACE OF USE IS WEST OF MUSSELSHELL RIVER

Remarks:

AUTHORIZATION TO CHANGE POINT OF DIVERSION COMPLETED 06/07/83.

CLAIMS 40A-W-151880-00 AND 40A-W-206914-00 ARE SUBJECT TO A PRIVATE AGREEMENT RECORDED IN MUSSELSHELL COUNTY, MONTANA, IN BOOK 345 AT PAGE 12.

**ABSTRACT OF WATER RIGHT CLAIM
AS MODIFIED BY THE WATER COURT**

**MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A**

IMPORTANT NOTICE

AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY ORDER OF THE MONTANA WATER COURT AFTER ISSUANCE OF THE PREVIOUS DECREE.

Water Right Number: 40A 214226-00 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: SUTHERLAND LIVING TRUST
ROBERT R SUTHERLAND, TRUSTEE
4394 BONITARD
BONITA, CA 91902

ELIASSON RANCH CO
PO BOX 389
16365 HWY 12 W
ROUNDUP, MT 59072 0389

Priority Date: JUNE 10, 1929

Type of Historical Right: USE

***Purpose (use):** IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 5.50 CFS

USE OF THIS FLOW RATE IS LIMITED TO THREE TIMES PER YEAR, THREE DAYS PER TIME, AT 5.50 CFS. MORE TIME MAY BE REQUIRED AT LOWER FLOWS.

***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:** 14.10

Source: MUSSELSHELL RIVER

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		NESWNW	4	7N	25E	MUSSELSHELL

Diversion Means: DIVERSION DAM

DITCH NAME: RODEGHIERO DITCH

***Period of Use:** MAY 15 to SEPTEMBER 24

***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	8.60		E2NENW	4	7N	25E	MUSSELSHELL
2	5.50		W2NWNE	4	7N	25E	MUSSELSHELL
Total:	14.10						

ENTIRE PLACE OF USE IS EAST OF MUSSELSHELL RIVER

Remarks:

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. W151880-00.