

40A-0181-R-2022

October 13, 2022

Montana Water Court

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

* * * * *

CLAIMANTS: Carla J. Brook; Rodney T. Brook

OBJECTOR: Tierney Land & Livestock Co.

CASE 40A-0181-R-2022

40A 123679-00

40A 123680-00

40A 123690-00

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 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

Water Right Claims 40A 123679-00, 40A 123680-00, and 40A 123690-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). Each claim received objections filed by Tierney Land & Livestock Co.

The Court consolidated this claim into Water Court Case 40A-0181-R-2022 on April 5, 2022. The consolidation order scheduled an initial status conference. Claimant

Rodney T. Brook appeared. Objector did not appear. Claimant agreed to a settlement deadline, and the Court issued an order setting a settlement period on May 10, 2022.

Attorney Christopher Scoones filed an appearance for Claimants on June 14, 2022, and filed a response to the Court's order setting a settlement deadline on June 27, 2022.

FINDINGS OF FACT

1. Water Right Claim 40A 123680-00 appeared with the following issue remark:

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 THIS CLAIM.

2. Each above-captioned claim received an objection filed by Tierney Land & Livestock Co.

3. Tierney Land & Livestock Co. is a predecessor-in-interest to current Claimants Carla J. Brook and Rodney T. Brook.

4. Attorney Chris Scoones indicated during an initial status conference in Case 40A-0313-R-2022 that the Brooks should be substituted as Objectors in that case and the present case. Mr. Scoones also indicated he would file a notice of appearance as counsel for the Brooks in each case. The Court received such notice.

5. Claimants' June 27, 2022 response indicates the objections were filed to request addition of an information remark indicating that undeveloped springs contribute to each claimed source. The response includes several motions to amend.

6. The motions to amend included with the June 27, 2022 response are signed by Rodney Brook. Each motion requests the Court add the following remark to the source of each above-captioned claim:

SOURCE INCLUDES MULTIPLE SPRINGS

7. Claimants are the only water right owners on the claimed unnamed tributaries of the Musselshell River. The alleged locations of the undeveloped springs contributing to the claimed unnamed tributaries are on land owned by Claimants.

8. The requested information remark should be added to the source name of each above-captioned claim.

9. The issue remark should be removed from 40A 123680-00.

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. 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.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

4. The Water Court has the authority to hear all objections to the elements of any claim included in a Court issued Temporary Preliminary Decree or Preliminary Decree. Section 85-2-233, MCA.

CONCLUSIONS OF LAW

1. The Court may add the requested information remarks because it is more likely than not that undeveloped springs contribute to the claimed source of each above-captioned claim as described by Claimant and asserted by the predecessor-in-interest Tierney Land & Livestock Co.

2. The Court may remove the issue remark from Claim 40A 123680-00 because it has served its notice purpose and does not raise any unresolved issues.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. Post-decree Abstracts of Water Right Claims are

served with this Report to confirm the recommended changes have been made in the state's centralized record system.

Colton J. Lauer
Water Master

Service via USPS Mail:

Last Order:

Carla J. Brook
Rodney T. Brook
PO Box 242
Judith Gap, MT 59453

Service Via Electronic Mail:

Christopher T. Scoones
Lund Law PLLC
662 S. Ferguson Ave., Unit 2
Bozeman, MT 59718
(406) 586-6254
Scoones@Lund-Law.com

Note: Service List Updated 9-27-22

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

Water Right Number: 40A 123679-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RODNEY T BROOK
PO BOX 242
JUDITH GAP, MT 59453 0242

CARLA J BROOK
PO BOX 242
JUDITH GAP, MT 59453 0242

Priority Date: JANUARY 15, 1896

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name UNNAMED TRIBUTARY OF 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		S2	25	8N	15E	WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

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			S2	25	8N	15E	WHEATLAND

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

Water Right Number: 40A 123680-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RODNEY T BROOK
PO BOX 242
JUDITH GAP, MT 59453 0242

CARLA J BROOK
PO BOX 242
JUDITH GAP, MT 59453 0242

Priority Date: APRIL 30, 1950

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name UNNAMED TRIBUTARY OF MUSSELSHELL RIVER

Source Type: SURFACE WATER

SOURCE INCLUDES MULTIPLE SPRINGS

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twtp</u>	<u>Rge</u>	<u>County</u>
1		SENE SW	25	8N	15E	WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twtp</u>	<u>Rge</u>	<u>County</u>
	SENE SW	25	8N	15E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Dam Height: 6.00 FEET

Depth: 3.00 FEET

Surface Area: 1.00 ACRES

Capacity: 1.20 ACRE-FEET

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twtp</u>	<u>Rge</u>	<u>County</u>
1			NESW	25	8N	15E	WHEATLAND

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

Water Right Number: 40A 123690-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RODNEY T BROOK
PO BOX 242
JUDITH GAP, MT 59453 0242

CARLA J BROOK
PO BOX 242
JUDITH GAP, MT 59453 0242

Priority Date: DECEMBER 20, 1895

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name UNNAMED TRIBUTARY OF MUSSELSHELL RIVER

Source Type: SURFACE WATER

SOURCE INCLUDES MULTIPLE SPRINGS

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		SWNE	24	8N	15E	WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

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			SWNE	24	8N	15E	WHEATLAND