

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

\* \* \* \* \*

CLAIMANTS: Carla J. Glennie; T. Neil Glennie; Daniel A.  
Weaver; Lena R. Weaver

**CASE 40A-0205-R-2022**  
40A 204446-00  
40A 204447-00  
40A 204448-00

**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 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 above-captioned claims appeared in the Preliminary Decree for the Musselshell River above Roundup (Basin 40A) issued on June 7, 2017. The claims are owned by Carla J. Glennie and T. Neil Glennie. Claim 40A 204448-00 is also owned by

Daniel A. Weaver and Lena R. Weaver. The claims did not receive objections, counterobjections, or notices of intent to appear but did receive issue remarks during the DNRC's claims reexamination. Issue remarks are notations identifying potential legal or factual issues with water rights and the Water Court is required to resolve these potential issues.

### FINDINGS OF FACT

#### **40A 204446-00**

1. Claim 40A 204446-00 appeared in the Basin 40A Preliminary Decree as a claim for stock drinking from a reservoir in the NENENE of Section 3, T9N, R18E, Wheatland County.

2. The claim received the following issue remark:

THE POINT OF DIVERSION, RESERVOIR RECORD, AND PLACE OF USE ARE IN QUESTION. THERE DOES NOT APPEAR TO BE A RESERVOIR AT THE CLAIMED LOCATION.

3. The DNRC did not provide any notes describing what evidence they relied on when determining the reservoir could not be seen at the claimed location. This information is particularly useful where, as here, the claimed reservoirs are small stockwater reservoirs that may not be visible on all aerial photographs.

4. On February 28, 2022, the Court ordered Claimants to file evidence showing the historically accurate location of the reservoir by the deadline. Nothing was filed by the deadline.

5. On May 16, 2022, the Court ordered Claimants to show cause whether the point of diversion, reservoir record, and place of use were historically inaccurate. The Order stated that if nothing was filed by the deadline, the elements would remain as they appeared in the Basin 40A Preliminary Decree. Nothing was filed by the deadline.

#### **40A 204448-00**

6. Claim 40A 204448-00 appeared in the Basin 40A Preliminary Decree as a claim for stock drinking from a reservoir on an unnamed tributary of Little Careless Creek in the SENENE of Section 27, T11N, R18E, Wheatland County.

7. The claim received the following issue remark:

THE SOURCE MAY BE INCORRECT. THE CLAIM FORM SUGGESTS A SPRING IS THE SOURCE OF WATER. IF SO, THE SOURCE NAME SHOULD BE SPRING, UNNAMED TRIBUTARY OF LITTLE CARELESS CREEK.

8. On February 28, 2022, the Court ordered Claimants to file evidence showing the historically accurate location of the reservoir by the deadline. Nothing was filed by the deadline.

9. On May 16, 2022, the Court ordered Claimants to show cause why the source should not be changed to “Spring, Unnamed Tributary of Little Careless Creek.” The Order stated that if nothing was filed by the deadline, the source name would be changed. Nothing was filed by the deadline.

10. Claim 40A 204448-00 also received the following issue remark:

THE POINT OF DIVERSION, RESERVOIR RECORD, AND PLACE OF USE MAY BE INCORRECT. THERE DOES NOT APPEAR TO BE A RESERVOIR AT THE CLAIMED LOCATION. BASED ON REVIEW OF TOPOGRAPHIC MAPS, IT APPEARS THE RESERVOIR MAY BE LOCATED IN THE NWNESE SEC 27 TWP 11N RGE 18E WHEATLAND CO.

11. The Court ordered Claimants to file evidence showing the historically accurate location of the reservoir if they did not agree with the DNRC’s proposed corrections. The Order stated that if nothing was filed by the deadline, the point of diversion, reservoir record, and place of use would be corrected as described in the issue remark. Nothing was filed by the deadline.

### **Notice-Type Issue Remark**

12. The claims received the following notice-type issue remark

MEANS OF DIVERSION WAS 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.

13. The issue remark states the means of diversion was modified as a result of DNRC review pursuant to Montana Water Court reexamination orders. The remark indicates that if no objections are filed, the means of diversion will remain as they appear on the abstract and the remark will be removed. None of the claims received objections.

### **PRINCIPLES OF LAW**

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. 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.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

#### CONCLUSIONS OF LAW

##### **40A 204446-00**

1. The reservoir issue remark does not overcome the prima facie status of claim 40A 204446-00. There is no evidence in the claim file showing the claimed location of the reservoir is historically inaccurate. The point of diversion, reservoir record, and place of use should remain as they appeared in the Basin 40A Preliminary Decree, and the remark should be removed from the claim abstract.

##### **40A 204448-00**

2. The source issue remark overcomes the prima facie status of claim 40A 204448-00. The evidence in the claim file shows the historically accurate source name is “Spring, Unnamed Tributary of Little Careless Creek.” The source name should be modified accordingly. This modification resolves the source issue remark, and the remark should be removed from the claim abstract.

3. The reservoir issue remark overcomes the prima facie status of claim 40A 204448-00. The evidence in the claim file shows the historically accurate location of the reservoir is in the NWNESE of Section 27, T11N, R18E, Wheatland County. The point of diversion, reservoir record, and place of use should be modified accordingly. These modifications resolve the reservoir issue remark, and the remark should be removed from the claim abstract.

**Notice-Type Issue Remark**

4. The means of diversion issue remark in Finding of Fact No. 12 provides notice of the changes made after completion of the Temporary Preliminary Decree proceedings and prior to issuance of the Preliminary Decree. The remark does not raise unresolved issues that need to be addressed. No proceedings are required to resolve the remark; the remark should be removed from the claim abstracts.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of each water right claim reflecting the recommended changes is attached to this Report.

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Melissa Lockman  
Senior Water Master

**Service via USPS Mail:**

T. Neil Glennie  
Carla J Glennie  
1643 Judith Gap Rd  
Judith Gap, MT 59453 8103

Lena R Weaver  
Daniel A Weaver  
5639 Crystal Lake Rd  
Moore, MT 59464 9512

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

**Water Right Number:** 40A 204446-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** CARLA J GLENNIE  
1643 JUDITH GAP RD  
JUDITH GAP, MT 59453 8103

T NEIL GLENNIE  
1643 JUDITH GAP RD  
JUDITH GAP, MT 59453 8103

**Priority Date:** SEPTEMBER 30, 1944

**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 HALBERT 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		NENENE	3	9N	18E	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>Twp</u>	<u>Rge</u>	<u>County</u>
	NENENE	3	9N	18E	WHEATLAND

**Diversion to Reservoir:** DIVERSION # 1

**Period of Use:** APRIL 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			NENENE	3	9N	18E	WHEATLAND

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

**Water Right Number:** 40A 204447-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** CARLA J GLENNIE  
1643 JUDITH GAP RD  
JUDITH GAP, MT 59453 8103

T NEIL GLENNIE  
1643 JUDITH GAP RD  
JUDITH GAP, MT 59453 8103

**Priority Date:** JUNE 30, 1938

**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** SPRING 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		SWSWSE	28	10N	18E	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>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSWSE	28	10N	18E	WHEATLAND

**Diversion to Reservoir:** DIVERSION # 1

**Period of Use:** APRIL 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			SWSWSE	28	10N	18E	WHEATLAND

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

**Water Right Number:** 40A 204448-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**

CARLA J GLENNIE  
1643 JUDITH GAP RD  
JUDITH GAP, MT 59453 8103

T NEIL GLENNIE  
1643 JUDITH GAP RD  
JUDITH GAP, MT 59453 8103

DANIEL A WEAVER  
5639 CRYSTAL LAKE RD  
MOORE, MT 59464 9512

LENA R WEAVER  
5639 CRYSTAL LAKE RD  
MOORE, MT 59464 9512

**Priority Date:** JUNE 15, 1938

**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** SPRING, UNNAMED TRIBUTARY OF LITTLE CARELESS 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		NWNESE	27	11N	18E	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>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNESE	27	11N	18E	WHEATLAND

**Diversion to Reservoir:** DIVERSION # 1

**Period of Use:** JUNE 1 TO NOVEMBER 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			NWNESE	27	11N	18E	WHEATLAND