

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

CLAIMANTS: Allan S. Bentz; Catherine C. Bentz; Patrick
Bentz; **Anne Marie Kloppel; Steven M.
Kloppel**

CASE 40A-0380-R-2022
40A 130864-00
40A 130865-00

OBJECTOR: United States of America (USDA Forest Service)

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 130864-00 and 40A 130865-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). These claims received objections filed by the United States of America (USDA Forest Service).

The Court consolidated these claims into Water Court Case 40A-0380-R-2022 on January 21, 2022. The consolidation order scheduled an initial status conference for February 17, 2022. Claimants did not appear to that conference, but a March 1, 2022 letter filed by Patrick Bentz indicated Claimants wished to participate. The Court set another status conference and then set a settlement deadline.

The parties filed settlement documents on August 10, 2022. Objector filed a Notice of Errata with a revised stipulation on August 25, 2022.

FINDINGS OF FACT

1. Water Right Claims 40A 130864-00 and 40A 180365-00 each appeared with the following issue remarks:

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 01/19/2016, THE PROPERTY ON WHICH THIS WATER RIGHT IS USED MAY ALSO BE OWNED BY STEVEN KLOPPEL AND ANNE MARIE KLOPPEL.

THE CLAIMED POINT OF DIVERSION IS IN QUESTION, THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

2. The United States of America (USDA Forest Service) objected to all elements of Claim 40A 130864-00 and Claim 40A 130865-00.

3. According to the August 25, 2022 Revised Stipulation, the parties agree the Court should dismiss Claim 40A 130864-00. The parties further agree to the placement of the following information remark to the abstract of Claim 40A 130865-00:

THE PLACE OF USE AND POINT OF DIVERSION ARE LIMITED TO MS 2865.

4. Claim 40A 130864-00 should be dismissed. The agreed upon information remark should be added to the abstract of Claim 40A 130865-00.

5. Steven M. and Anne Marie Kloppel were added to the ownership of Claim 40A 130865-00 on May 13, 2022.

6. The issue remarks should be removed from Claim 4A 130865-00.

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 promotes and will facilitate resolution of objections and issue remarks through settlement or mediation. Parties may confer with each other and exchange information before the case is put on a hearing track. Parties may file settlement documents during these initial settlement proceedings. Rule 16(a), W.R.Adj.R.

3. If a Claimant agrees to reduce an element of their claim, the Court does not need to make a determination as to whether the burden of proof has been met. Rule 17(c), W.R.Adj.R.

CONCLUSIONS OF LAW

1. The Revised Stipulation executed by the parties in this case is sufficient to support the dismissal of Claim 40A 130864-00 and the addition of the information remark described in Finding of Fact No. 3 to Claim 40A 130865-00.

2. The point of diversion issue remark on Claim 40A 130865-00 does not overcome the prima facie status of the claim by a preponderance of the evidence.

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:

Allan S. Bentz
Catherine C. Bentz
Patrick Bentz
5412 Cobble Stone Ave
Billings, MT 59106

Anne Marie Kloppel
Steven M Kloppel
5015 Maribrooke Road
Shepherd, MT 59079

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Note: Caption Updated 9-21-22

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

Water Right Number: 40A 130864-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Owners:

PATRICK BENTZ
5412 COBBLE STONE AVE
BILLINGS, MT 59106

ALLAN S BENTZ
5412 COBBLE STONE AVE
BILLINGS, MT 59106

CATHERINE C BENTZ
5412 COBBLE STONE AVE
BILLINGS, MT 59106

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (use): MINING

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF CASTLE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

Water Right Number: 40A 130865-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

PATRICK BENTZ
5412 COBBLE STONE AVE
BILLINGS, MT 59106

ALLAN S BENTZ
5412 COBBLE STONE AVE
BILLINGS, MT 59106

CATHERINE C BENTZ
5412 COBBLE STONE AVE
BILLINGS, MT 59106

STEVEN M KLOPPEL
5015 MARIBROOKE RD
SHEPHERD, MT 59079 4315

ANNE MARIE KLOPPEL
5015 MARIBROOKE RD
SHEPHERD, MT 59079 4315

Priority Date: SEPTEMBER 30, 1950

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 25.00 GPM

Volume: 1.50 AC-FT

Households: 1

Source Name UNNAMED TRIBUTARY OF CASTLE 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		SWNESE	14	8N	8E	MEAGHER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

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			SWNESE	14	8N	8E	MEAGHER

Remarks:

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.

130864-00

130865-00

THE PLACE OF USE AND POINT OF DIVERSION ARE LIMITED TO MS 2865.