

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

\*\*\*\*\*

CLAIMANT: Checkerboard Cattle Company LLC

OBJECTOR: United States of America (USDA Forest Service)

**CASE 40A-0430-R-2020**

40A 198018-00

40A 30105239

40A 30105246

**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, conclusion 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 198018-00, 40A 30105239, and 40A 30105246 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). These claims received issue remarks. These claims also received objections filed by the United States of America (USDA Forest Service).

The Court consolidated these claims into Water Court Case 40A-0430-R-2020 on September 29, 2020. The consolidation order set a filing deadline by which Objector was to file a response to several motions to amend filed by Claimant. On November 4, 2020, Objector filed a response. On August 12, 2021, the Court requested clarification on certain issues. Claimant filed a response on December 10, 2021. The Court then set a deadline by which Objector was to notify the Court as to whether its objections were resolved. Objector filed a response on January 20, 2022.

### **FINDINGS OF FACT**

1. Claim 40A 198018-00 appeared with the following issue remarks:

THE MEANS OF DIVERSION DOES NOT APPEAR TO BE STANDARDIZED FOR POINT OF DIVERSION NO. 6. THE MEANS OF DIVERSION APPEARS TO BE A LIVESTOCK DIRECT FROM SOURCE.

THE SOURCE NAME APPEARS TO BE INCOMPLETE. IT APPEARS THIS CLAIM ALSO INCLUDES SURFACE WATER FROM WHETSTONE CREEK, NORTH FORK. ACCORDING TO USGS TOPOGRAPHIC MAPS, WHETSTONE CREEK, NORTH FORK ORIGINATES IN THE E2 SEC 30 AND PASSES THROUGH SEC 20 AND SEC 21, ALL IN TWP 9N RGE 10E MEAGHER CO.

2. Claims 40A 30105239 and 40A 30105246 appeared with the following issue remark:

THIS EXEMPT CLAIM WAS FILED ON 01/28/2016. THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 40A DECREE ISSUED 05/07/1985.

3. The United States objected to the maximum acres, means of diversion, place of use, point of diversion, and source of Claim 40A 198018-00, to the maximum acres, period of diversion, period of use, place of use of Claim 40A 30105239, and to the maximum acres, means of diversion, period of diversion, period of use, place of use, point of diversion of Claim 40A 30105246.

4. In response to these objections, Claimant filed motions to amend the above-captioned claims on July 2, 2018. Through Claimant's December 10, 2021 response and these motions, Claimant requests the following modifications to these claims:

**Claim 40A 30105239**

- Remove Point of Diversion/ Place of use No. 2
- Change Point of Diversion/ Place of Use No. 6 to SWSWSW of Section 34, T10N, R10E.
- Add a Point of Diversion/ Place of Use described as NWNE of Section 15, T9N, R10E.

**Claim 40A 30105246**

- Remove Points of Diversion/ Places of Use Nos. 3, 4, 7, and 8.
- Add Points of Diversion/ Places of Use described as follows: NWNE of Section 18, T10N, R10E; SENW of Section 18, T10N, R10E; E2SW of Section 18, T10N, R10E.
- Modify Point of Diversion/ Place of Use No.6 to be described as follows: E2W2 of Section 30, T10N, R10E.

5. Regarding Claim 40A 198018-00, Claimant withdraws its motion to amend the claim. The Court modified the claim in previous proceedings involving Claimant's predecessors-in-interest and the United States of America (USDA Forest Service). *See* Master's Report, Case 40A-147, July 13, 1989.

6. Claimant states that the abstract for this claim was improperly corrected to reflect all points of diversion as being on Unnamed Tributaries of Whetstone Creek. Claimant states this is not correct, as only two points of diversion are located on Unnamed Tributaries of Whetstone Creek.

7. Upon review of the claim file, it is unclear as to why the Court added an information remark stating that "all points of diversion" are on Unnamed Tributaries of Whetstone Creek. This remark does not appear in the Master's Report. A general information remark appears to correctly identify the points of diversion and places of use in "Sections 29 and 30, T09N, R10E" as being on Unnamed Tributaries of Whetstone Creek. These remarks are incongruent or superfluous depending on which is taken as correct.

8. Claimant states that "[t]he proper identification of only points of diversion nos. 1 and 2 as located on unnamed tributaries of Whetstone Creek, North Fork should address the DNRC issue remarks on this claim. . . ." Claimant further states its position

that the aforementioned Master’s Report, stipulation, and subsequent Order Adopting are binding on the parties, and Claimant does not object to the Court decreeing the elements of the claimed water rights as they were determined during previous proceedings.

9. Objector states in its January 20, 2022 response that “Claimant’s proposed clarifications, if implemented, would resolve the United States’ objections to Water Right Claim Nos. 40A 198018-00, 40A 30105239, and 40A 30105246 . . . .”

10. Claims 40A 30105239 and 40A 30105246 should be modified as described in Finding of fact No. 4.

11. The information remark on Claim 40A 198018-00 incorrectly identifying “all” points of diversion as located on Unnamed Tributaries of Whetstone Creek, North Fork should be removed. Point of Diversion/ Means of Diversion No. 6 of Claim 4A 198018-00 should be “livestock direct from source.”

12. The issue remarks on each above-captioned claim should be removed.

#### **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 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.

5. 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 changes described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of the claim by a preponderance of the evidence.

2. The evidence in the record and the proposed changes provide the Court with a sufficient basis to resolve and remove each issue remark from each above-captioned claim.

### **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.

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Colton J. Lauer  
Water Master

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**Note: Service List Updated 6-21-22**

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

**Water Right Number:** 40A 198018-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** CHECKERBOARD CATTLE COMPANY LLC  
315 GROVELAND ST  
ORLANDO, FL 32804 4052

**Priority Date:** MAY 1, 1902

**Type of Historical Right:** FILED

**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** WHETSTONE CREEK, NORTH FORK  
**Source Type:** SURFACE WATER

**\*Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SE	20	9N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		N2SW	20	9N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		SESW	20	9N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4		NE	21	9N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5		N2NW	21	9N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
6		SENW	21	9N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					

7		S2	21	9N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
8			29	9N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
9			30	9N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
<b>Period of Use:</b>	JANUARY 1 TO DECEMBER 31					

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
1				SE	20	9N	10E	MEAGHER
2				N2SW	20	9N	10E	MEAGHER
3				SESW	20	9N	10E	MEAGHER
4				NE	21	9N	10E	MEAGHER
5				N2NW	21	9N	10E	MEAGHER
6				SENW	21	9N	10E	MEAGHER
7				S2	21	9N	10E	MEAGHER
8					29	9N	10E	MEAGHER
9					30	9N	10E	MEAGHER

**Remarks:**

THE POINTS OF DIVERSION AND PLACES OF USE IN SECTIONS 29 AND 30, T09N, R10E, ARE LOCATED ENTIRELY IN HOMESTEAD (OR BLM) PATENT NO. 397236. THESE POINTS OF DIVERSION ARE ON UNNAMED TRIBUTARIES OF WHETSTONE CREEK, NORTH FORK.



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

**Water Right Number:** 40A 30105239 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** CHECKERBOARD CATTLE COMPANY LLC  
315 GROVELAND ST  
ORLANDO, FL 32804 4052

**Priority Date:** JUNE 1, 1948

**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** SPRING CREEK

**Source Type:** SURFACE WATER

**\*Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2	3	9N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		E2SW	10	9N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		NWNE	15	9N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4		SENESE	33	10N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5		SESE	33	10N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
6		SWSWSW	34	10N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	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			W2	3	9N	10E	MEAGHER
2			E2SW	10	9N	10E	MEAGHER
3			NWNE	15	9N	10E	MEAGHER
4			SENESE	33	10N	10E	MEAGHER
5			SESE	33	10N	10E	MEAGHER
6			SWSWSW	34	10N	10E	MEAGHER

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

**Water Right Number:** 40A 30105246 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** CHECKERBOARD CATTLE COMPANY LLC  
315 GROVELAND ST  
ORLANDO, FL 32804 4052

**Priority Date:** JUNE 1, 1948

**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.

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**Source Name** TRAIL CREEK

**Source Type:** SURFACE WATER

**\*Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWSE	7	10N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		NENSW	7	10N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		NWNE	18	10N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4		SENW	18	10N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5		E2SW	18	10N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
6		E2W2	19	10N	10E	MEAGHER
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					

7 E2W2 30 10N 10E MEAGHER

**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			NESWSE	7	10N	10E	MEAGHER
2			NENESW	7	10N	10E	MEAGHER
3			NWNE	18	10N	10E	MEAGHER
4			SESW	18	10N	10E	MEAGHER
5			E2SW	18	10N	10E	MEAGHER
6			E2W2	19	10N	10E	MEAGHER
7			E2W2	30	10N	10E	MEAGHER