

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

* * * * *

CLAIMANT: Springwater Colony Inc.

CASE 40A-0242-R-2022
40A 202002-00

OBJECTORS: Deadmans Basin Water Users Assn; State of
Montana Department of Natural Resources

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

Claim 40A 202002-00 appeared in the Preliminary Decree for the Musselshell River above Roundup (Basin 40A) issued on June 7, 2017. The claim is owned by Springwater Colony Inc. The claim received objections from Deadmans Basin Water

Users Association and the DNRC. The claim also received issue remarks during the DNRC's claims reexamination.

FINDINGS OF FACT

1. Claim 40A 202002-00 is a flood irrigation claim that diverts water using a dam and onstream reservoir in Government Lot 6 of Section 6, T10N, R15E, Wheatland County.

2. The objections filed by Deadmans Basin Water Users Association and the DNRC raise the same issues. Both state that the means of diversion should be changed to a diversion dam and the period of use should be reduced to reflect the irrigation season.

3. On May 2, 2023, Objector State of Montana, Department of Natural Resources (DNRC) filed a status report. (Doc.¹ 4.00) The DNRC's status report stated that it was unlikely further extensions would result in a settlement and requested that the case be placed on a hearing track. Claimant Springwater Colony Inc. and Objector Deadmans Basin Water Users Association did not file status reports as ordered.

4. On August 15, 2023, the Court held a scheduling conference in this matter. Cameron Boster appeared on behalf of Objector, the Department of Natural Resources and Conservation (DNRC). Peter Taylor appeared on behalf of Deadmans Basin Water Users Association. No one appeared on behalf of Springwater Colony Inc.

5. At the scheduling conference, the appearing parties requested a show cause order be issued for Claimant. On September 5, 2023, Objectors filed a joint notice that the period of use for the claim should be reduced to May 1 to September 30 to correspond with the irrigation season.

6. The Court set a deadline for Claimant to show cause why the period of use should not be modified to reflect the irrigation season. The Order stated that if nothing was filed by the deadline, the period of use would be modified to May 1 to September 30. Nothing was filed by the deadline.

7. Claim 40A 202002-00 received the following substantive issue remarks:

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 61 TIMES THE CAPACITY OF THE RESERVOIR.

PER A MEETING WITH JOE HOFER OF SPRINGWATER COLONY ON 01/17/2017, STORAGE WATER IS NOT THE PRIMARY SOURCE OF WATER FOR THIS IRRIGATION CLAIM. IT APPEARS THIS SYSTEM IS A DIRECT FLOW SYSTEM AND THAT A FLOW RATE, RATHER THAN A VOLUME, SHOULD BE DECREED.

8. Claim 40A 202002-00 was adjudicated during the Basin 40A Temporary Preliminary Decree. The claim received an objection from the DNRC and was called in on motion of the Water Court. To resolve the objection, the Master's Report modified the flow rate and volume as they appeared in the Basin 40A Preliminary Decree.

9. Claim 40A 202002-00 also received the following notice-type issue remarks:

PRIORITY DATE WAS CHANGED FROM JUNE 30, 1973 TO DECEMBER 31, 1954, TO CONFORM TO THE EVIDENCE. BECAUSE PRIORITY DATE WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

MEANS OF DIVERSION, POINT 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 THE CLAIM.

10. The issue remarks identify elements modified prior to the issuance of the Basin 40A Preliminary Decree. These remarks served their notice purposes.

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.

8. The party seeking to overcome the prima facie status of a Statement of Claim bears the burden of proof. *Nelson v. Brooks*, 2014 MT 120, ¶¶ 34, 37, 375 Mont. 86, 329 P.3d 558.

9. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

10. Sanctions applied against a claimant may include modification of a claim to conform with data provided by the DNRC, information obtained by the Court, or information included in an objection, or the entry of default and termination of a water right claim. Rule 11, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The objections overcome the prima facie status of claim 40A 202002-00. The evidence shows by a preponderance of the evidence that the irrigation season, and therefore the period of use, is May 1 to September 30. The evidence also shows the means of diversion is a diversion dam. Modification of the means of diversion and period of use resolves the objections.

2. The issue remarks in Finding of Fact No. 7 do not overcome the prima facie status of the claim. The flow rate information remark and quantified volume were set by the Water Court during adjudication of the Basin 40A Temporary Preliminary Decree.

3. The notice-type issue remarks in Finding of Fact No. 9 provide notice of the changes made after completion of the Temporary Preliminary Decree proceedings and prior to issuance of the Preliminary Decree. The remarks do not raise unresolved

issues that need to be addressed. No proceedings are required to resolve the remarks; the remarks should be removed from the abstracts.

RECOMMENDATIONS

1. The means of diversion should be changed to “diversion dam.”
2. The period of use should be changed to “May 1 to September 30.”
3. The issue remark should be removed from claim 40A 202002-00.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

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(*atty Deadmans Basin*)

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

Water Right Number: 40A 202002-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SPRINGWATER COLONY INC
% LARRY WIPF
PO BOX 782
HARLOWTON, MT 59036

***Priority Date:** DECEMBER 31, 1954

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 137.00 AC-FT

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 27.00

Source Name: UNNAMED TRIBUTARY OF ROBERTS 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	6	NWNWSW	6	10N	15E	WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DIVERSION DAM

MEANS OF DIVERSION INCLUDES A DIKE.

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
6	NWNWSW	6	10N	15E	WHEATLAND

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 0.70 ACRES

Capacity: 2.24 ACRE-FEET

Period of Use: MAY 1 TO SEPTEMBER 30

***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	27.00		SW	6	10N	15E	WHEATLAND

Total: 27.00