

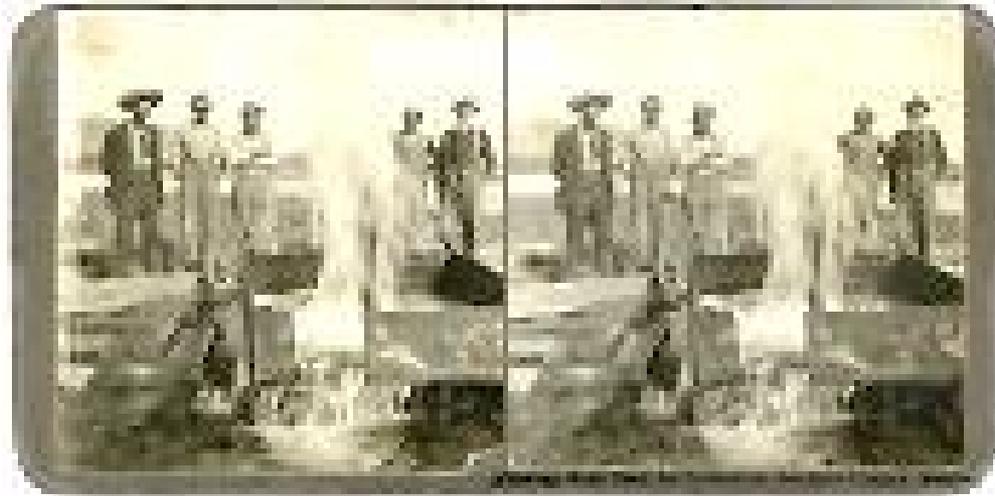
# A short history of the Water Court

WPIC

September 2015

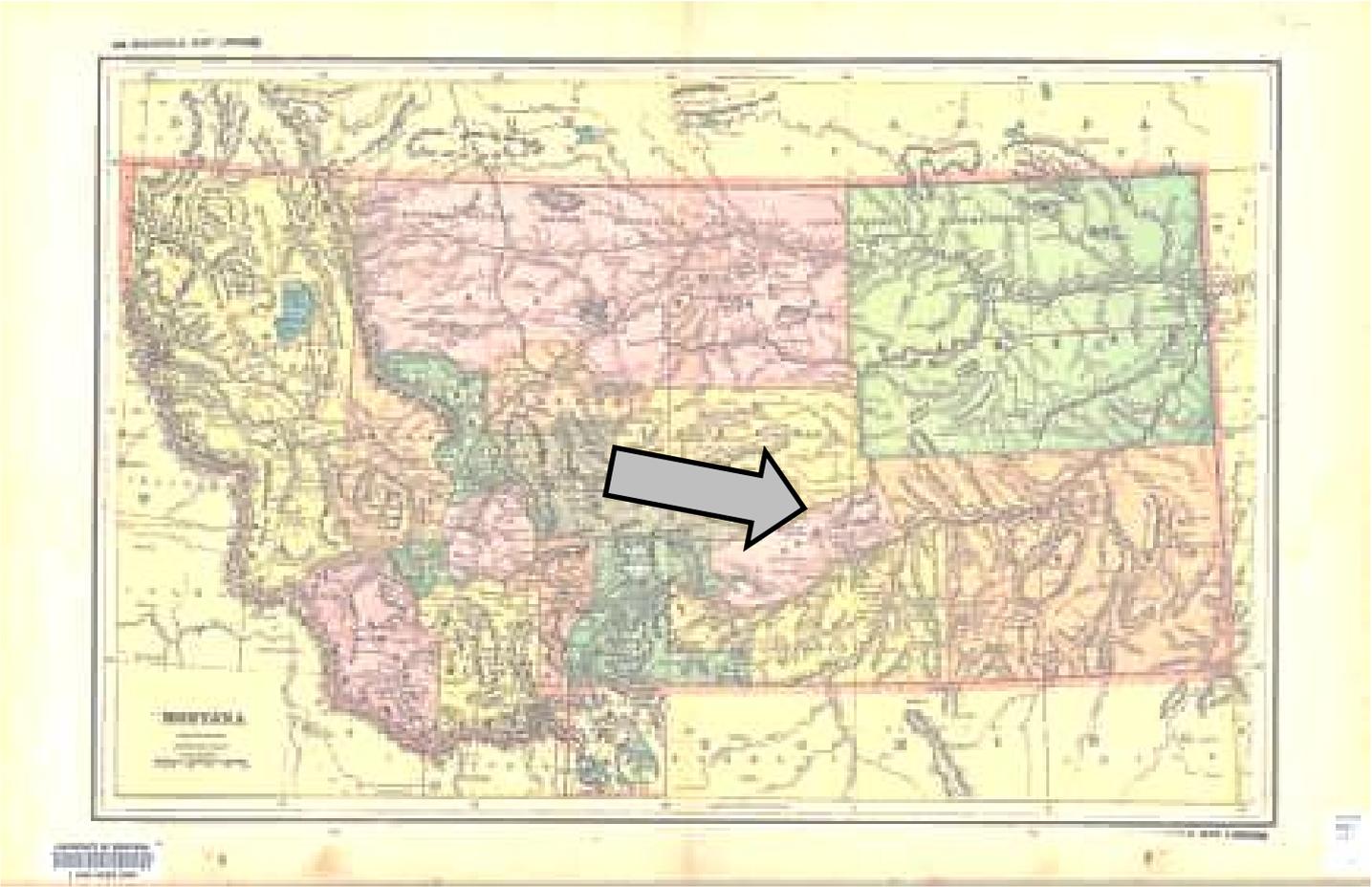


**“First in time, first in right”**



“The use of all water  
appropriated...shall be held  
to be a public use”







## **Mettler v. Ames Realty Co. (1921)**

Chief Justice Theo Brantly

POOR COPY

614976

J. D. J-152  
10-428

IN THE DISTRICT COURT OF THE FOURTEENTH JUDICIAL DISTRICT  
OF THE STATE OF MONTANA, IN AND OF THE COUNTY OF  
MUSSELSHELL

LEO H. LINDSTROM, OTTO  
FISCH, LINDS HARPER, W. K. MOATS  
and LLOYD V. MOATS, DOMINICK  
VESCOVI, GEORGE P. PATHS and  
MICHAELAS T. KATHS, co-partners  
doing business under the firm name  
and style of KATHS' Ranch, and  
ALBERT GRIFFOLL,

No. 515  
150  
this 2nd day of  
June 1952

Plaintiffs,

v  
DONA HART JACOTT, LEO HART and  
ALMA HART, his wife, AGNES W. HARMAN  
and JOHN JOSEPH HARMAN, her husband, and  
the unknown owners of the Haderman  
Irrigation Canal or Ditch in Mussel-  
shell County, Montana, and of the water  
rights to the use of water appro-  
priated thereby from the Musselshell  
River in Musselshell County, Montana,  
all as more certainly in the complaint  
below described, and all other persons,  
partners, claimants, or who might claim  
rights, title, estate, or interest in, or  
lien or encumbrance upon, the real property  
described in the complaint, or any thereof,  
adverse to plaintiffs' ownership, or any  
cloud upon plaintiffs' title thereto,  
whether such claim or possible claim be  
present or contingent, including any claim  
or possible claim of dower, inchoate or  
accrued,

Defendants.

FINDINGS OF FACT AND DELIBERATIONS

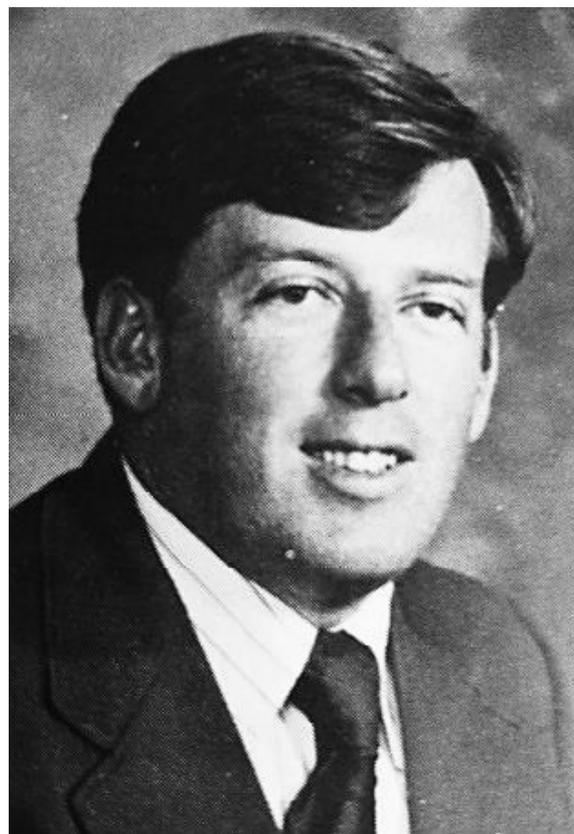
This cause coming on regularly to be heard before  
the Honorable F. V. Watts, Judge of the above-entitled  
court, on the 2nd day of June, 1952, before the Court  
sitting without a jury and the plaintiffs appearing in

“...said defendants are the owners of and entitled to the use of...640 miners inches of water as of the date of August 15, 1906...”  
Judge F.V. Watts, 1952



**“The legislature shall provide for the administration, control, and regulation of water rights...”**

1972 Montana Constitution



Subcommittee on Water Rights (1977-78)



## **SB76 creates Water Court**

**First chief Water Judge W.W. Lessley locates court in Bozeman**

Form No. 761 (10/79)  
**014976**  
 RECEIVED  
 APR 21 1981  
 STATEMENT OF CLAIM FOR EXISTING WATER RIGHTS  
**IRRIGATION**  
 For the Water Courts of the State of Montana  
 DEPT. OF NATURAL RESOURCES AND CONSERVATION BILLINGS OFFICE

MU-V  
 O

1 Owner of Water Right Jarrett / Leo / R  
 Co Owner or Other Interest Owner \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 Address 2944 James St.  
 City Billings  
 Home Phone No 259-32

2 Person completing form  
 Address 2944 James St.  
 City Billings  
 Home Phone No 259-32

3 Name of ditch, creek or river  
 Use  Irrigation

4 Method of Irrigation Use  
 Source of Water  
 Stream Name Missoula River Tributary of Missoula River  
 Spring  
 Well  
 Lake  
 Reservoir

5 Point of Diversion County Missoula  
SE W SE W SW W, Section 23, T 7N N/S R 24E EW

7 Means of Diversion  
 Pump Capacity \_\_\_\_\_ gpm  
 Headgate and ditch or pipe  
 Flood and dike

8 Means of Conveyance  
 Ditch  
 Pipeline  
 Other Explain \_\_\_\_\_

- 640 miner's inches (16 cubic feet per second)
- 130 acres irrigated
- Aug. 15, 1906 priority date

6 Place of use and acres irrigated County Missoula  
30 acres W 1/2 W SW W Section 13 T 7N N/S R 24E EW  
30 acres W W SE W Section 14 T 7N N/S R 24E EW  
70 acres W W NE W Section 23 T 7N N/S R 24E EW  
130 acres W W W W Section \_\_\_\_\_ T \_\_\_\_\_ N/S R \_\_\_\_\_ EW

7 Volume claimed 640  cubic feet per second  
650  miner's inches  
 \_\_\_\_\_ acre feet

8 Priority Date April 1 to October 1  
 Decreed Water Right  
 Filed Appropriation Right  
 Use Water Right

9 Signature of claimant  
 I Leo E. Jarrett having been first duly sworn deposes and says that (he) (she) (they) being of legal age and being the claimant(s) of the foregoing claim of Existing Water Right and the person(s) whose name(s) is (are) subscribed thereto as the claimant(s) that (he) (she) (they) knows the contents of said foregoing claim and that the matters and things therein are true and correct  
 Subscribed and sworn before me this 6th day of April 1981  
William S. Fisher  
 My Commission expires March 10, 1982  
 Residing at Billings

8/15/1906

AOA

TEMPORARY PRELIMINARY DECREE ON MUSSELHELL RIVER ABOVE ROUNDUP - BASIN AOA  
INDEX OF CLAIMS BY PRIORITY DATE

WATER RIGHT ID USE	FLOW RATE	PRIORITY DATE	POINT OF DIVERSION STR SEC TWP RGE CN UT	SOURCE NAME	OWNER NAME	H A J A J A
AOA -W-207484-00 IR	7.49 C	11/01/1905	ME 19 08N 25E N4	FISH CREEK	WELCH WELCH OTT OTT OTT	VIOLA JACK JAMES KATHLEEN JAMES KATHLEEN
AOA -W-015769-00 IR	2.31 C	11/18/1905	NE 18 06N 20E 6V	FISH CREEK	DRAKE DRAKE OTT	GOLDEN VALLEY COLONY GOLDEN VALLEY COLONY RATMOND
AOA -W-109106-00 ST	5.00 C	11/18/1905	SH 14 06N 19E 6V	FISH CREEK	OTT	DAVID
AOA -W-128572-00 IR	5.00 C	11/18/1905	ME 20 06N 19E 6V	FISH CREEK	WILLIAMS	JANET KENNETH
AOA -W-004582-00 IR	.38 C	11/18/1905	MM 19 08N 19E 6V	FISH CREEK	LEWIS LEWIS	CARELESS CREEK RANCH CO LIVESTOCK CO
AOA -W-015768-00 IR	4.55 C	11/18/1905	MM 19 06N 19E 6V	FISH CREEK	WILLIAMS	DAVID
AOA -W-109138-00 IR	2.08 C	12/27/1905	MM 19 06N 18E 6V	FISH CREEK	WILLIAMS	DAVID
AOA -W-002154-00 IR	2.23 C	12/27/1905	MM 19 06N 18E 6V	FISH CREEK	WILLIAMS	DAVID
AOA -W-109178-00 ST	30.00 G	12/31/1905	SE 24 08N 15E 1W	WALTERS COULEE	WILLIAMS	OF BOARD OF LAND
AOA -W-198221-00 ST	4.55 C	01/15/1906	SE 24 08N 18E 6V	BIG COLLEE CREEK, SOUTH FORK	WILLIAMS	STATE OF BOARD OF LAND
AOA -W-002155-00 ST	17.50 C	01/15/1906	SE 24 08N 18E 6V	BIG COLLEE CREEK, SOUTH FORK	WILLIAMS	MELAN
AOA -W-002152-00 IR	1.00 C	05/15/1906	SE 24 08N 18E 6V	MUSSELHELL RIVER	WILLIAMS	RANCH INC
AOA -W-101992-00 IR	1.00 C	05/15/1906	SE 24 08N 18E 6V	BIG ELK CREEK	WILLIAMS	IVER
AOA -W-029707-00 ST	3.60 C	05/23/1906	SE 24 08N 18E 6V	CHECKERBOARD CREEK	WILLIAMS	IVER
AOA -W-029296-00 ST	1.96 C	06/01/1906	SE 24 08N 18E 6V	SPRING CREEK	WILLIAMS	DOROTHY
AOA -W-110008-00 IR	1.96 C	06/01/1906	SE 24 08N 18E 6V	MIDDLE FORK	WILLIAMS	BRUCE
AOA -W-105540-00 ST	1.96 C	06/01/1906	SE 24 08N 18E 6V	MIDDLE FORK	WILLIAMS	RICARD
AOA -W-026218-00 ST	1.96 C	06/01/1906	SE 24 08N 18E 6V	MIDDLE FORK	WILLIAMS	ROBERT
AOA -W-105541-00 ST	1.96 C	06/01/1906	SE 24 08N 18E 6V	MIDDLE FORK	WILLIAMS	HERBERT
AOA -W-198015-00 ST	1.96 C	06/01/1906	SE 24 08N 18E 6V	MIDDLE FORK	WILLIAMS	HERBERT
AOA -W-022843-00 IR	1.25 C	06/16/1906	ME 23 07N 17E 1W	JENIZEN SPRINGS	LYNN	US DEPT OF AGRICULTURE FOREST S
AOA -W-019251-00 IR	4.04 G	08/10/1906	ME 23 07N 17E 1W	JENIZEN SPRINGS	LYNN	US DEPT OF AGRICULTURE FOREST S
AOA -W-057654-00 ST	2.50 C	08/10/1906	ME 23 07N 17E 1W	JENIZEN SPRINGS	LYNN	US DEPT OF AGRICULTURE FOREST S
AOA -W-057652-00 ST	2.50 C	08/10/1906	ME 23 07N 17E 1W	JENIZEN SPRINGS	LYNN	US DEPT OF AGRICULTURE FOREST S
AOA -W-057495-00 ST	2.50 C	08/10/1906	ME 23 07N 17E 1W	JENIZEN SPRINGS	LYNN	US DEPT OF AGRICULTURE FOREST S
AOA -W-057616-00 ST	2.50 C	08/10/1906	ME 23 07N 17E 1W	JENIZEN SPRINGS	LYNN	US DEPT OF AGRICULTURE FOREST S
AOA -W-057631-00 ST	2.50 C	08/10/1906	ME 23 07N 17E 1W	JENIZEN SPRINGS	LYNN	US DEPT OF AGRICULTURE FOREST S
AOA -W-057604-00 ST	2.50 C	08/10/1906	ME 23 07N 17E 1W	JENIZEN SPRINGS	LYNN	US DEPT OF AGRICULTURE FOREST S
AOA -W-101598-00 IR	16.00 C	08/15/1906	SE 23 07N 17E 1W	JENIZEN SPRINGS	LYNN	US DEPT OF AGRICULTURE FOREST S
AOA -W-101612-00 IR	2.27 C	08/27/1906	SE 23 07N 17E 1W	JENIZEN SPRINGS	LYNN	US DEPT OF AGRICULTURE FOREST S
AOA -W-101599-00 IR	15.00 C	08/27/1906	SE 23 07N 17E 1W	JENIZEN SPRINGS	LYNN	US DEPT OF AGRICULTURE FOREST S
AOA -W-014976-00 IR	5.00 G	09/17/1906	MM 31 08N 10E 1W	MUSSELHELL RIVER, SOUTH FORK	BERG	US DEPT OF AGRICULTURE FOREST S
AOA -W-189172-00 IR	11.75 C	09/25/1906	MM 31 08N 10E 1W	MUSSELHELL RIVER, SOUTH FORK	BERG	US DEPT OF AGRICULTURE FOREST S
AOA -W-109353-00 ST	11.75 C	09/25/1906	MM 31 08N 10E 1W	MUSSELHELL RIVER, SOUTH FORK	BERG	US DEPT OF AGRICULTURE FOREST S
AOA -W-146045-00 IR	11.75 C	09/25/1906	MM 31 08N 10E 1W	MUSSELHELL RIVER, SOUTH FORK	BERG	US DEPT OF AGRICULTURE FOREST S

<u>Water Right Number</u>	<u>Parties involved</u>	<u>Nature of Objection</u>
015561	<p><b>Owner:</b> Laurence H. Thorson</p> <p><b>Source:</b> Galloway Creek</p> <p><b>Objector:</b> Mt. Dept. of Natural Resources &amp; Conservation</p>	<p>Volume, acres irrigated, place of use, flow rate. Objection withdrawn upon Stipulation</p>
ON MOTION OF THE WATER COURTS		Acres irrigated, volume, flow rate
015768	<p><b>Owner:</b> James J. &amp; Kathleen A. Ott</p> <p><b>Source:</b> Fish Creek</p> <p><b>Objector:</b> Eugene E. Taber</p> <p><b>Objector:</b> Darla J. Jeffers</p>	<p>Priority date, volume, place of use, acres irrigated, flow rate</p> <p>Priority date</p>
015769	<p><b>Owner:</b> James J. &amp; Kathleen A. Ott</p> <p><b>Source:</b> Fish Creek</p> <p><b>Objector:</b> Eugene E. Taber</p> <p><b>Objector:</b> Darla J. Jeffers</p> <p><b>Objector:</b> Mt. Dept. of Natural Resources &amp; Conservation</p> <p><b>Objector:</b> William H. Cooney</p> <p><b>Objector:</b> Cooney Bros.</p>	<p>Priority date, volume, place of use, acres irrigated, flow rate, point of diversion</p> <p>Priority date</p> <p>Acres irrigated, volume, flow rate</p> <p>Priority date, volume, acres irrigated, flow rate, point of diversion, period of use</p> <p>Priority date</p>
ON MOTION OF THE WATER COURTS		Acres irrigated, volume, flow rate
017167	<p><b>Owner:</b> Robert P. &amp; Dorothy M. Hanson</p> <p><b>Source:</b> Big Coulee Creek</p> <p><b>Objector:</b> Rueben C. Pitsch</p> <p><b>Objector:</b> Mt. Dept. of Natural Resources &amp; Conservation</p> <p><b>Objector:</b> Harry Vandervoot</p>	<p>Ownership, priority date, acres irrigated, flow rate</p> <p>Volume, acres irrigated, place of use, flow rate. Objection withdrawn upon Stipulation</p> <p>Volume, acres irrigated, flow rate</p>
ON MOTION OF THE WATER COURTS		Acres irrigated, volume, flow rate

STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
1424 9TH AVENUE P.O. BOX 201601 HELENA, MONTANA 59620-1601

**GENERAL ABSTRACT**

Water Right Number: 40A 14976-00 STATEMENT OF CLAIM  
Version: 2 -- CHANGE AUTHORIZATION  
Version Status: ACTIVE

Owners: PO BOX 333  
ROUNDUP, MT 59072-0333  
Priority Date: AUGUST 15, 1906

Enforceable Priority Date: AUGUST 15, 1906  
Purpose (use): IRRIGATION

Purpose Clarification: PIVOT IRRIGATION  
Irrigation Type: SPRINKLER

Maximum Flow Rate: 2.32 CFS  
Historical Flow Rate: 16.00 CFS  
Maximum Volume: 184.70 AC-FT  
Climatic Area: 1 - HIGH

Historical Diverted Volume: 324.20 AC-FT  
Historical Consumptive Volume: 166.30 AC-FT  
Maximum Acres: 131.10

Source Name: MUSSELSHELL RIVER  
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:  
Govt Lot Qtr Sec Twp Rge County  
1 NENWSE 23 7N 24E MUSSELSHELL  
Flow Rate: 2.32 CFS

Period of Diversion: APRIL 1 TO OCTOBER 1  
Diversion Means: PUMP

Period of Use: APRIL 1 to OCTOBER 1

ID	Place of Use:		Qtr	Sec	Tw	Rge	County
	Acres	Govt Lot					
1	12.00		W2SW	13	7N	24E	MUSSELSHELL
2	56.20		SE	14	7N	24E	MUSSELSHELL
3	61.00		NE	23	7N	24E	MUSSELSHELL
4	1.90		NWNWNW	24	7N	24E	MUSSELSHELL
Total:	131.10						

Geocodes/Valid: 23-1615-13-1-01-01-0000 - Y  
23-1615-23-2-01-02-0000 - Y  
23-1615-14-1-01-01-0000 - Y

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

14975-00 14976-00  
WATER MEASUREMENT RECORDS REQUIRED:  
THE APPROPRIATOR SHALL INSTALL A DEPARTMENT APPROVED WATER USE MEASURING DEVICE AT A POINT APPROVED BY THE DEPARTMENT. WATER MUST NOT BE DIVERTED UNTIL THE REQUIRED MEASURING DEVICE IS IN PLACE AND OPERATING. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPROPRIATOR SHALL KEEP A WRITTEN MONTHLY RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED INCLUDING THE PERIOD OF TIME. THE APPROPRIATOR SHALL KEEP A SEPARATE ACCOUNTING FOR THE FLOW RATE AND DIVERTED VOLUME OF EACH OF ITS WATER RIGHTS (40A 14975 00 AND 40A 14976 00). RECORDS SHALL BE SUBMITTED BY NOVEMBER 30 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A PERMIT OR CHANGE. THE RECORDS MUST BE SENT TO THE WATER

Flow rate = 16 cfs to 2.32 cfs  
Use = 130 acres to 131.1 acres



# Enforcement

1  
2  
3

35 CLERK OF THE DISTRICT COURT  
COURT HOUSE

2015 APR 14 PM 2 20

FILED

*Randal I. Spaulding*  
COURT

the area described above. This distribution project shall be for the Musselshell River Distribution Project. Peter T. Rouane, Jr. (O. Box 96, Martinsdale, Montana 59053, telephone number (406) 358-2235, email address petert@mtintouch.net) is hereby appointed Chief Engineer for the 2015 irrigation season. Peter T. Rouane, Jr. (13, Harlowton, Montana 59036, telephone number (406) 358-2235, email address hammond@itsTriangle.com; BONNIE STENSVAD (13, Harlowton, Montana 59054, telephone number (406) 358-2235, email address brouane@mtintouch.net; ROUANE, JR. (10B Cobble Stone Way, Harlowton, Montana 59036, telephone number (406) 358-2235 or (406) 422-2235)

**DISOBEDIENCE OF THIS ORDER SHALL BE PUNISHABLE AS A CONTEMPT OF COURT.**  
**IT IS SO ORDERED** this 14<sup>th</sup> day of April, 2015.

*Randal I. Spaulding*  
Hon. Randal I. Spaulding, District Judge

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[W]ater of the entire South Fork of the Musselshell River, from and between its headwaters and its confluence with the Musselshell River; and the mainstem of the Musselshell River from and between its confluence with the North and South Forks of the Musselshell River to the U.S.G.S. gauge station at Mosby, and all waters considered by the Montana Water Court to be a part of the lower Musselshell River below the U.S.G.S. gauge station at Mosby, Montana.

Enforcement is requested for five (5) years commencing in April 2011 and ending in September 2011 (or earlier in the spring and later in the fall, if conditions warrant), and each subsequent year.

Pursuant to said Petition, this Court has requested that the Montana Water Court prepare updated tabulations of existing water rights in the aforementioned portion(s) of Basins 40A and 40C for enforcement purposes for irrigation season 2015.

**ACCORDINGLY**, and for good cause appearing, **IT IS HEREBY ORDERED:**

- 1. The Temporary Preliminary Decrees of the Montana Water Court for Basins 40A and

35

Town of	
Roundup to and Barber Canal	John P. Rouane, Jr.
above Barber headwaters of South Forks	Leon Hammond and/or Peter T. Marchi

managerial purposes and will not be utilized

# MUSSELHELL RIVER DISTRIBUTION PROJECT



Photo courtesy of [Big Sky Fishing.com](http://Big Sky Fishing.com)

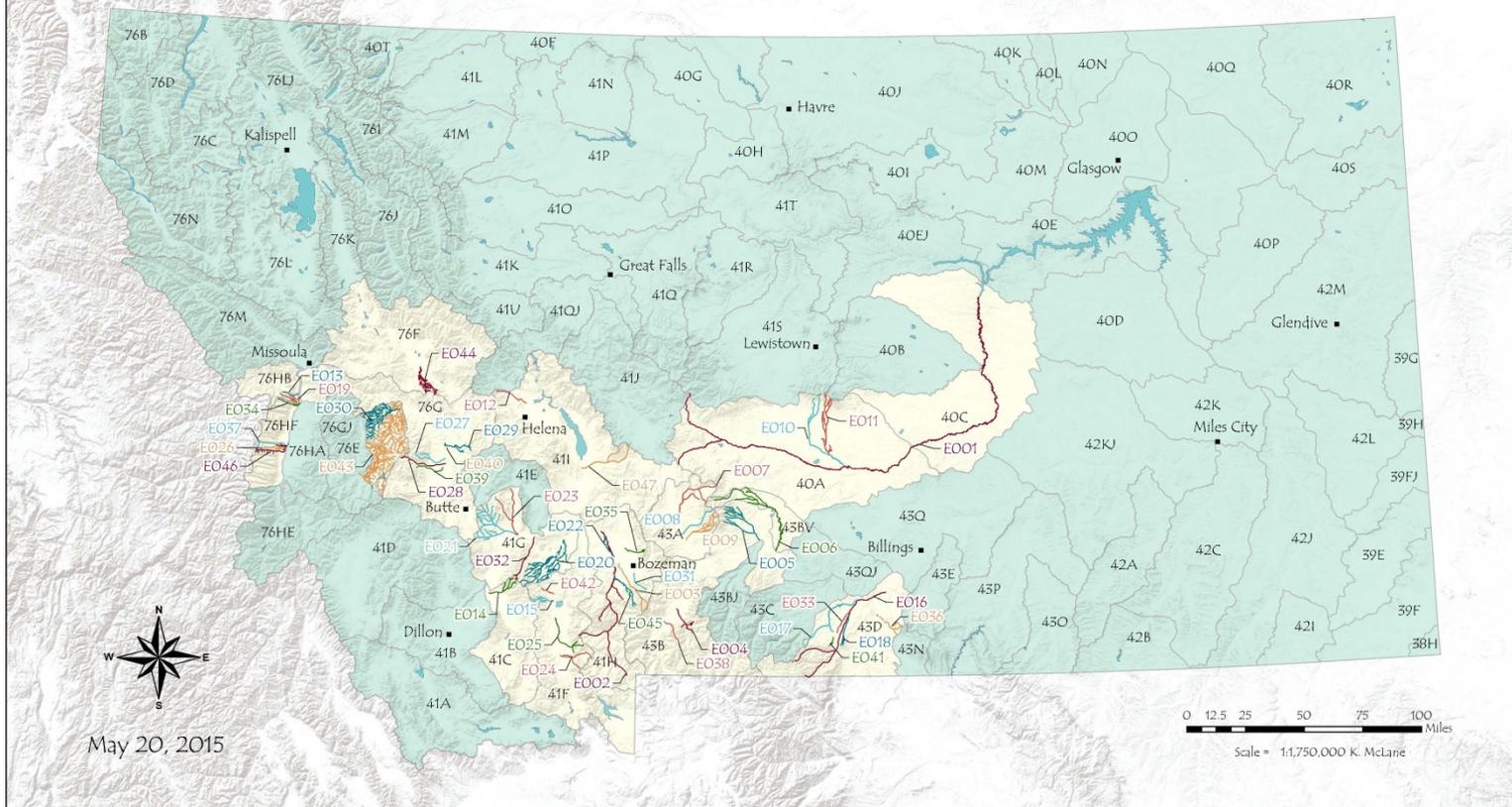
# ASSISTANCE FOR DISTRICT COURT ADMINISTRATION OF WATER COURT DECREES



## Water Distribution Projects

E#	Project Name	Basin #	E#	Project Name	Basin #	E#	Project Name	Basin #	E#	Project Name	Basin #	E#	Project Name	Basin #
EO01	Musselshell River	40A/40C	EO09	Rock Creek	43A	EO17	Red Lodge Creek	43D	EO24	Indian Creek	41F	EO52	South Boulder River	41G
EO02	West Gallatin River	41H	EO10	Careless Creek	40A	EO18	Clear Creek	43D	EO25	Bear Creek	41F	EO53	Dry Creek	43D
EO03	Hyalite Creek	41H	EO11	Swimming Woman Cr.	40A	EO19	One Horse Creek	76HB	EO26	Sheafman Creek	76HF	EO54	Sweeny Creek	76H
EO04	Mill Creek	43B	EO12	Silver Creek	41I	EO20	Willow Creek	41G	EO27	Dempsey Creek	76G	EO55	Middle Cottonwood Cr.	41H
EO05	Big Timber Creek	43B	EO13	Carlton Creek	76HB	EO21	Pipestone & Little Pipestone Creeks	41G	EO28	Racetrack Creek	76G	EO56	Bluewater Creek	43D
EO06	Sweet Grass Creek	43BV	EO14	Wisconsin Creek	41C	EO22	Baker Creek	41H	EO29	Cottonwood Creek	76G	EO57	Fred Burn Creek	76H
EO07	Shields River	43A	EO15	South Meadow Creek	41F	EO23	Whitetail Deer Cr.	41G	EO30	Lower Willow Creek	76GJ	EO58	Emigrant Creek	43B
EO08	Cottonwood Creek	43A	EO16	Rock Creek	43D	EO25	Whitetail Deer Cr.	41G	EO31	Sourdough Creek	41H	EO59	Modesty Creek	76G
												EO40	Valtion Ditch	76G
												EO41	Chaffin Creek	43D
												EO42	North Meadow Cr.	41F
												EO43	Flint Creek	76GJ
												EO44	Cottonwood Creek	76F
												EO45	South Cottonwood Cr.	41H
												EO46	Mill Creek	76HF
												EO47	Deep Creek	41I

Basins with Distribution Projects  
 Basins without Distribution Projects  
 Stream color indicates project extent and differentiates adjacent projects.



May 20, 2015

0 12.5 25 50 75 100 Miles  
Scale = 1:1,750,000 K. McLane



Next steps...