

Montana Water Court
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ELECTRONICALLY FILED

41G-0103-R-2020

November 25, 2022

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

CLAIMANTS: Chad J. Armstrong; Trista L. Armstrong

OBJECTOR: State of Montana (Board of Land Commissioners)

41G-0103-R-2020
41G 196695-00
41G 196696-00

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

Claims 41G 196695-00 and 41G 196696-00, owned by Chad and Trista Armstrong, appeared in the Preliminary Decree for the Jefferson River (Basin 41G)

issued on February 15, 2018. Each claim received an objection from the State of Montana Board of Land Commissioners, Trust Lands Management Division (TLMD), and issue remarks. Issue remarks are notations identifying potential legal or factual issues with water rights and are placed on claims by the Department of Natural Resources and Conservation (DNRC) during preparation of the Preliminary Decree. The claims were consolidated into Case 41G-0103-R-2020 to resolve the issue remarks and objections.

FINDINGS OF FACT

1. Claims 41G 196695-00 and 41G-196696-00 are irrigation claims to water from the South Boulder River diverted through the Missouri Ditch. They were included in a May 15, 1995 Stipulation signed by the Armstrongs' predecessor George Armstrong, the TLMD, and the attorney for Robert and Christene Wagner. The Stipulation was accepted in a in a December 12, 1995 Amended Master's Report in Case 41G-133, but changes to water rights including those in this case were deferred until after notice could be provided in the Preliminary Decree. That notice has now been provided.

2. TLMD objected to the ownership element of each claim based on the Court's decision in *Department of State lands v. Pettibone*, 216 Mont. 361, 702 P. 2d 948 (1985). The parties subsequently determined that the resolution of this case is governed by the 1995 Stipulation. Joint Status Report and Motion to Correct Scrivener's Error, September 29, 2021.

3. On September 29, 2020, TLMD filed a Conditional Withdrawal of Objections, stating that upon entry of an order accepting and implementing the Stipulation (May 15, 1995), TLMD's objections can be deemed resolved.¹

4. The claims each also received the following issue remarks, which seek to ensure the 1995 Stipulation is implemented:

THE PLACE OF USE, MAXIMUM ACRES, PERIOD OF USE, AND SUPPLEMENTAL RIGHTS REMARK APPEAR TO BE INCORRECT FOR THESE CLAIMS. ON MAY 15, 1995 A STIPULATION WAS FILED WITH THE WATER COURT INDICATING THAT THE PERIOD OF USE OF THESE CLAIMS SHOULD BE APRIL 15 TO NOVEMBER 15 AND THE PLACE OF USE AND MAXIMUM ACRES SHOULD BE 110 ACRES IN THE SE OF SECTION 08, 50 ACRES IN THE N2 OF SECTION 16 AND 25 ACRES IN S2 OF SECTION 09, ALL IN T01S, R02W, MADISON COUNTY.

¹ The withdrawal is also conditioned upon implementation of a correction requested in the parties' September 29, 2020 Joint Status Report and Motion to Correct Scrivener's Error (which was subsequently withdrawn). The changes requested in that motion to correct are being made contemporaneously in case 41G-113-R-2020.

THESE CHANGES AND THE CORRESPONDING CHANGE TO THE SUPPLEMENTAL RIGHTS REMARKS WILL BE CORRECTED AFTER ISSUANCE OF THE PRELIMINARY DECREE AND NOTICE IS GIVEN TO THIRD PARTIES PURSUANT TO SECTION 85-2-233(4), MCA, PROVIDED NO ADDITIONAL OBJECTIONS ARE MADE AND HEARINGS REQUESTED.

5. Pursuant to the 1995 Stipulation and consistent with the issue remarks, the following modifications should be made to claims 41G 196695-00 and 41G 196696-00:

Maximum Acres: ~~300.00~~ 185.00

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	110.00	SE	8	1S	2W	Madison
2	120.00 <u>50.00</u>	N2	16	1S	2W	Madison
3	70.00 <u>25.00</u>	S2	9	1S	2W	Madison
Total:	300.00 <u>185.00</u>					

6. The Stipulation also sought to modify the “Supplemental Rights” information remark to remove the reference to claim 41G-W143538. The supplemental rights information remark on claims 41G 196695-00 and 41G 196696-00 appeared in the Preliminary Decree without reference to claim 41G-W143538.

7. The Stipulation also requests that the period of use be amended as follows: ~~May 1 to Oct 19~~ April 15-November 15. However, the period of use and diversion was subsequently addressed in case 41G-A15 after notice had been provided to all potentially harmed parties pursuant to §85-2-223(6). On March 3, 2013, the Court issued a Master’s Report in Case 41G-A15 recommending modification of the periods of use and diversion of this claim to April 15 – Oct 20. That Master’s Report was adopted on March 29, 2013.

8. The Stipulation requested modifications to three additional claims that are not included in this case. The Stipulation’s modifications to claim 41G 143538-00 were made via the December 12, 1995 Amended Master’s Report in case 41G-133. The Stipulation’s modifications to the remaining two claims have been made (41G 143539-00 in 41G-0101-R-2020 and 41G 196694-00 in 41G-0102-R-2020).

9. This case was stayed pending the resolution of case 41G-0113-R-2020, to ensure that changes were not made to other water rights subject to the 1995 Stipulation

that could affect TLMD's conditional withdrawal in this case. An order adopting the master's report in case 41G-0113-R-2020 was issued on November 2, 2022, resolving the remaining issues in that case. The only modification to a claim in case 41G-0113-R-2020 was clerical in nature and did not deviate from the 1995 Stipulation.

PRINCIPLES OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA.

2. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

4. 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.

5. 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. § 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

1. It is ORDERED that the stay in this case is lifted.

2. This Court's October 19, 1995 Master's Report approved the modifications to claims 41G 196695-00 and 41G 196696-00 requested in the Stipulation. The record supports modification of the place of use and maximum acres as described in Paragraph 3, above. The issue remarks are resolved to the extent that they question these elements.

3. The issue remarks are resolved to the extent that they request a

modification to the supplemental rights information remark, as that modification has already been made.

4. The issue remarks fail to overcome the prima facie status of the claim regarding the period of use, which was modified by a 2013 Master's Report. The period of use should remain as it appeared in the Preliminary Decree and the issue remarks should be removed from the Claim.

5. The Stipulation has been implemented and TLMD's objections are therefore deemed resolved.

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.

Eyvind Ostrem
Senior Water Master

Service via Electronic Mail

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 196695-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: CHAD J ARMSTRONG
55 CEMETERY HILL RD
CARDWELL, MT 59721

TRISTA L ARMSTRONG
55 CEMETERY HILL RD
CARDWELL, MT 59721

Priority Date: JUNE 1, 1896

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 1.40 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 185.00

Source Name: SOUTH BOULDER RIVER

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		NWSE	15	1S	3W	MADISON

***Period of Diversion:** APRIL 15 TO OCTOBER 20

Diversion Means: HEADGATE

Ditch Name: MISSOURI DITCH

***Period of Use:** APRIL 15 TO OCTOBER 20

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	110.00		SE	8	1S	2W	MADISON
2	50.00		N2	16	1S	2W	MADISON
3	25.00		S2	9	1S	2W	MADISON
Total:	185.00						

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.

196694-00

196695-00

196696-00

THE PERIOD OF DIVERSION AND PERIOD OF USE WERE AMENDED BY THE WATER COURT PURSUANT TO SECTION 85-2-233(6), MCA.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

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CARDWELL, MT 59721

TRISTA L ARMSTRONG
55 CEMETERY HILL RD
CARDWELL, MT 59721

Priority Date: JUNE 1, 1919

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 2.25 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 185.00

Source Name: SOUTH BOULDER RIVER

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>
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Diversion Means: HEADGATE

Ditch Name: MISSOURI DITCH

***Period of Use:** APRIL 15 TO OCTOBER 20

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>
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