

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

CLAIMANTS: Nancy R. Paige; Ronald Paige

OBJECTOR: Ronald Paige

CASE 41G-0502-R-2022

41G 46133-00

41G 116999-00

41G 117000-00

41G 117001-00

41G 117002-00

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
FINDINGS OF FACT

1. Claims 41G 46133-00, 41G 116999-00, 41G 117000-00, 41G 117001-00 and 41G 117002-00 were consolidated into this case to address the objections they received from Claimant Ronald Paige and to address the DNRC issue remarks placed on claims 41G 46133-00, 41G 116699-00, 41G 117001-00.

2. The order consolidating summarized the issues for each claim and discussed the objections filed against the claims by Ronald Paige. The Order indicated that most of the objections were supported by the information before the court. The only clarification requested by the court concerned the source name for the spring claimed by 41G 117001-00. A filing deadline was set for the claimant to clarify the appropriate source name for claim 41G 117001-00. Nothing was filed by the deadline. Accordingly, the objections and issue remarks should be resolved as discussed below based on the best information before the court.

Claim 41G 46133-00

3. The objection to claim 41G 46133-00 indicates the claim has not been used since 1955 and should be considered abandoned. The objection states that the claim was only used during the short existence of the Nelson Reservoir, which washed out in 1955 and became unusable. No further proceedings are required for claim 41G 46133-00. It should be dismissed as abandoned.

Claim 41G 116999-00

4. Claim 41G 116999-00 received the following DNRC issue remark:

THE TIMELY FILED OBJECTION OF THE CLAIMANT WAS AMENDED BY THE COURT TO INCLUDE POINT OF DIVERSION. BECAUSE THIS ELEMENT 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.

This issue remark is considered a notice-issue remark. It provides notice that the point of diversion was modified during adjudication of the Basin 41G Temporary Preliminary Decree. No objections were filed against claim 41G 116999-00 during the

Basin 41G Preliminary Decree objection period. No further proceedings are required to resolve the issue remark appearing on claim 41G 116999-00. Claim 41G 116999-00 did not receive any objections.

Claim 41G 117000-00

5. Claim 41G 117000-00 did not receive any DNRC issue remarks. It received an objection from Ronald Paige. The objection states that claim 41G 117000-00 does not “overlap” with claim 41G 117002-00.

9. State the changes you think should be made to this claim and why. State the specific grounds and evidence on which the Objection is based. (Use additional paper if necessary.) *The water claimed by this right is not used for domestic purposes and does not "overlap" claim 41G-117002-00. Springs for claims 117001 and 117002 are located in the same area but are separate, they are used simultaneously but separately.*

DATED this 26th day of March, 2018.

Ronald E. Paige
SIGNATURE OF OBJECTOR OR OBJECTOR'S ATTORNEY

It appears the objection is in reference to the “Multiple Use” information remark that appears on claims 41G 117000-00, 41G 117001-00, and 41G 117002-00.

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.

117000-00 117001-00 117002-00

This information remark is used commonly in the adjudication and is added to claims when the same historic appropriation has been claimed by the original appropriator for more than one purpose.

Claims 41G 117000-00 (stock right), 41G 117001-00 (irrigation right), and 41G 117002-00 (domestic right) are all for different purposes and were claimed by the same owner. The same Declaration of Vested Groundwater Rights form was attached to the statement of claim for each water right in support. Accordingly, the addition of the Multiple Use remark to the claims is technically accurate.

However, the purpose of the Multiple Use remark is to limit water use to the quantity claimed by the original appropriation. In this case, the Declaration claimed the entire flow:

10. The estimated amount of groundwater withdrawn each year...The total flow.....

Accordingly, the Multiple Use remark, while not incorrect, is also not needed to accurately administer the right. The Multiple Use remark may be removed from each of the claims pursuant to the claimant's objection.

Claim 41G 117001-00

6. Claim 41G 117001-00 received an objection from the claimant and the following issue remark:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. THERE MAY BE PROBLEMS WITH VOLUME.

Claim 41G 117001-00 is an irrigation claim. The claim is quantified by volume since the water right as claimed includes an Onstream Reservoir. However, the Onstream Reservoir is identified as Nelson Reservoir. The claimant has indicated that the Nelson Reservoir was washed out in 1955. Accordingly, the Nelson Reservoir should be removed from the claim abstract.

Claims involving onstream reservoirs are generally quantified by volume. Because the onstream reservoir is being removed from this claim, the claim should be quantified by flow rate. The volume will be replaced with the standard volume information remark:

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

In his objection, Paige indicates that the average flow rate of the springs of Unnamed Spring Creek is 120 gpm and the diversion means is a headgate. The original statement of claim for water right 41G 117001-00 identified a flow rate of 20 MI, which is equivalent to 187 gpm. Accordingly, the requested 120 gpm flow rate is adequately supported by the evidence before the court.

The above modifications to claim 41G 117001-00 resolve the issue remark appearing on the claim.

Two additional issue remarks appear on claim 41G 117001-00:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD WAS 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.

The above issue remarks are considered notice issue remarks. They do not require further proceedings and will be removed from the claim.

Additionally, as discussed above, the Multiple Use information remark appearing on the claim should be removed pursuant to the claimant's objection.

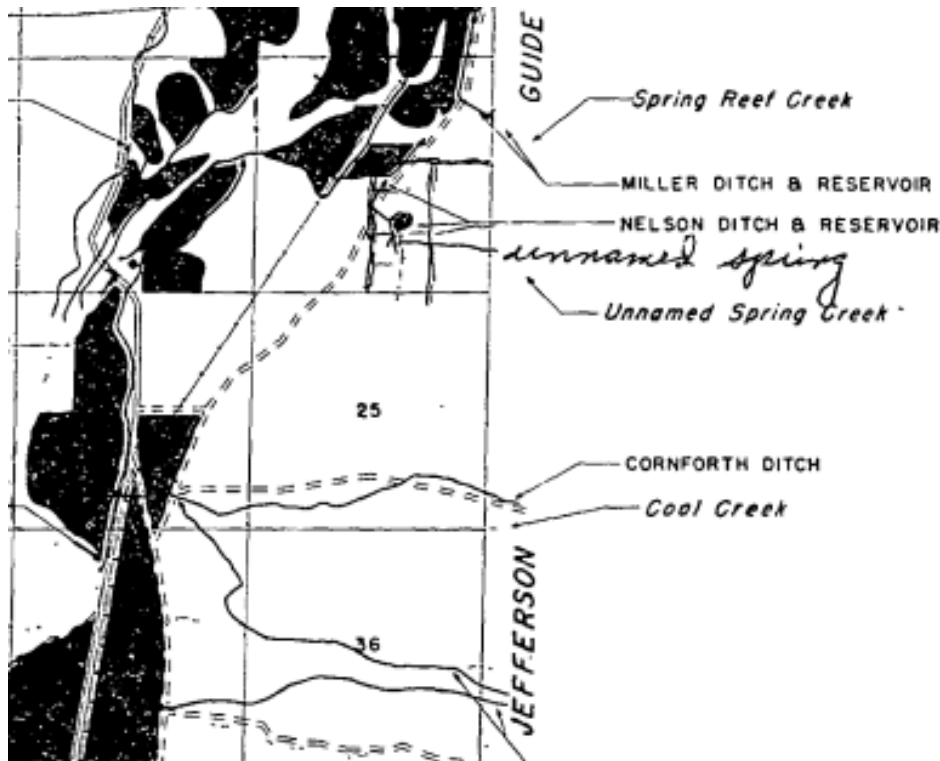
41G 117002-00

7. Claim 41G 117002-00 did not receive any DNRC issue remarks. Paige filed an objection to the source identified by the claim. The source that appears on the Preliminary Decree abstract is "Spring, Unnamed Tributary of Unnamed Spring Creek." The Paige Objection states the source for claim 41G 117002-00 is not a tributary of Unnamed Spring Creek. It is a separate spring which serves domestic uses via a spring box and pipeline and is fed by groundwater.

9. State the changes you think should be made to this claim and why. State the specific grounds and evidence on which the Objection is based. (Use additional paper if necessary.) *Source — not a tributary of unnamed Spring Creek. It is a separate spring which serves domestic uses via a spring box & pipeline and is fed by groundwater.*

For groundwater sources, the source name for springs is generally described as "Spring, Unknown Tributary of ... [whatever source the groundwater is tributary to]." In

this case, it appears that the springs claimed by 41G 117002-00 are tributary to Unnamed Spring Creek (which is identified as the source on the Water Resource Survey map included in the claim file).



Claimant has made clear that claims 41G 117000-00, 41G 117001-00, and 41G 117002-00 are based on separate springs. This is also evident from the different maps attached to the statement of claims in each of the claim files. Despite the springs being separate from each other, it is still accurate to identify the source for each as “Spring, Unnamed Tributary of Unnamed Spring Creek” if they are all tributary to Unnamed Spring Creek.

Accordingly, it appears that the source for claim 41G 117002-00 is correctly identified as “Spring, Unnamed Tributary of Unnamed Spring Creek.” The claimant was provided an opportunity to file evidence in support of identifying a different source on the claim abstract, but nothing was filed by the deadline.

Additionally, as discussed above, the multiple use information remark appearing on the claim should be removed pursuant to the claimant’s objection.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. 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.

For the most part, Paige's objections to his own claims are supported by the information before the water court. The modifications described above should be implemented. The only objection that was not adequately supported was the objection to the source for claim 41G 117001-00. Paige was provided an opportunity to file additional evidence and explanation, but nothing was filed by the deadline. The source for claim 41G 117001-00 should remain as it appeared in the Preliminary Decree.

2. All issue remarks to claims that are not resolved through the filing of an objection must be resolved pursuant to § 85-2-248, MCA. § 85-2-248(2), MCA. However, the requirement to resolve issue remarks does not eliminate the prima facie status granted to water rights, nor does it change the burden of proof required to modify or invalidate a claim. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015. The issue remarks appearing on claims 41G 116999-00 and 41G 117001-00 do not overcome the prima facie status of the claims. The issue remarks should be removed from the claim abstracts.

3. If a claimant, objector, or intervenor fails to comply with an order issued by the water court, the water court may issue such orders of sanction with regard thereto as are just. Sanctions applied against claimants may include termination of the claim; or modification of the claim to conform with data provided by the department, information obtained by the court, or information included in an objection. Sanctions applied against objectors and intervenors may include dismissal of the objector or intervenor from the proceeding. Rule 22, W.R.Adj.R. Claimant/objector did not respond to the court's order

setting filing deadline. Based on the best information before the court, no changes will be made to the source for Claim 41G 117001-00

RECOMMENDATIONS

1. Claim 41G 46133-00 should be dismissed from the adjudication.
2. The above modifications should be made to claims 41G 117000-00, 41G 117001-00, and 41G 117002-00.
2. The issue remarks should be removed from claims 41G 116999-00 and 41G 117001-00.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

Madeleine Weisz
Senior Water Master

Service via USPS Mail:

Nancy R. Paige
Ronald Paige
740 Bayers Lane
Twin Bridges, MT 59754-9616

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G

Water Right Number: 41G 46133-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

***Owners:** RONALD E PAIGE
740 BAYERS LN
TWIN BRIDGES, MT 59754 9616

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (use): IRRIGATION

Flow Rate:

Volume:

Source Name: UNNAMED SPRING 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
JEFFERSON RIVER
BASIN 41G

Water Right Number: 41G 116999-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RONALD E PAIGE
740 BAYERS LN
TWIN BRIDGES, MT 59754 9616

Priority Date: DECEMBER 31, 1870

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** UNNAMED TRIBUTARY OF UNNAMED SPRING CREEK

Source Type: GROUNDWATER

***Source Name** SPRING, UNNAMED TRIBUTARY OF UNNAMED SPRING CREEK

Source Type: GROUNDWATER

***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		SWSWSE	24	2S	6W	MADISON

***Source Name:** SPRING, UNNAMED TRIBUTARY OF UNNAMED SPRING CREEK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2		SESESW	24	2S	6W	MADISON
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***Source Name:** UNNAMED TRIBUTARY OF UNNAMED SPRING CREEK

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			SWSWSE	24	2S	6W	MADISON
2			SESESW	24	2S	6W	MADISON

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G

Water Right Number: 41G 117000-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RONALD E PAIGE
740 BAYERS LN
TWIN BRIDGES, MT 59754 9616

Priority Date: DECEMBER 31, 1870

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 SPRING, UNNAMED TRIBUTARY OF UNNAMED SPRING CREEK

Source Type: GROUNDWATER

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		NESWSE	24	2S	6W	MADISON

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	24	2S	6W	MADISON
2			NWSWSE	24	2S	6W	MADISON
3			NWSESE	24	2S	6W	MADISON
4			SWNWSE	24	2S	6W	MADISON
5			SESWSE	24	2S	6W	MADISON
6			NWNWSE	24	2S	6W	MADISON

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 117001-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: RONALD E PAIGE
740 BAYERS LN
TWIN BRIDGES, MT 59754 9616

Priority Date: DECEMBER 31, 1870

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 120.00 GPM

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

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 3.75

Source Name SPRING, UNNAMED TRIBUTARY OF UNNAMED SPRING CREEK

Source Type: GROUNDWATER

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		SWNWSE	24	2S	6W	MADISON

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO OCTOBER 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	1.25		SWNWSE	24	2S	6W	MADISON
2	1.25		NWNWSE	24	2S	6W	MADISON
3	1.25		SENESEW	24	2S	6W	MADISON
Total:	<u>3.75</u>						

**WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 117002-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: RONALD E PAIGE
740 BAYERS LN
TWIN BRIDGES, MT 59754 9616

Priority Date: DECEMBER 31, 1870

Type of Historical Right: FILED

Purpose (use): DOMESTIC

***Flow Rate:** 20.00 GPM

Volume: 5.00 AC-FT

Households: 1

Maximum Acres: 2.00

***Source Name** SPRING, UNNAMED TRIBUTARY OF UNNAMED SPRING CREEK
Source Type: GROUNDWATER

***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		SWNWSE	24	2S	6W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SPRING BOX
MEANS OF DIVERSION INCLUDES A SPRINGBOX AND PIPELINE.

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	1.25		SENESEW	24	2S	6W	MADISON
2	0.75		SWNWSE	24	2S	6W	MADISON
Total:	<u>2.00</u>						