

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

CLAIMANT: Jefferson Acres Property Owners Assn.

CASE 41G-0534-R-2022
41G 110293-00

OBJECTORS: Nelson Spring Creek Ranch; United
States of America (Bureau of
Reclamation)

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. Claim 41G 110293-000 is an irrigation claim from the Jefferson River. It is owned by Jefferson Acres Property Owners Assn. It received a DNRC issue remark during claims examination and it received an objection from Nelson Spring Creek Ranch and the United States Bureau of Reclamation.

2. On December 6, 2023, the parties filed a Stipulation to resolve the issue remark and the objections. (Doc.¹ 24.00). The parties indicate that the point of diversion, ditch name, and means of diversion should be corrected and that the place of use should be reduced.

3. The Statement of Claim for claim 41G 110293-00 identified a point of diversion in the N2SWNW of Section 26, 2S, 6W. No ditch name was claimed. During DNRC examination, the DNRC changed the point of diversion to NWSWNW of Section 26, 2S, 6W and added a ditch name: Creeklyn Ditch.

4. The parties agree that the accurate point of diversion for claim 41G 110293-00 is located in the SESWSW of Section 23, 2S, 6W; the accurate ditch name is Bonawitz Ditch; and the accurate means of diversion is “ditch” rather than “headgate.” In support the parties provide maps of the ditch system. Additional support is provided by the Water Resource Survey, which can be found in the claim file. The point of diversion, ditch name, and means of diversion should be corrected pursuant to the terms of the Stipulation.

5. The Stipulation also requests that the place of use be reduced from 248 acres to 39.50 acres. A map of the revised place of use is attached to the Stipulation. The parties provide the following legal land description for the 39.50-acre place of use.

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

Place of Use:

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr</u> <u>Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|---------------|-------------------------|-----------------|-----------------------|------------------|------------|------------|---------------|
| 1 | 58.00 00.25 | SWNWSW | W2W2 | 13 | 2S | 6W | MADISON |
| 2 | 106.00 06.25 | | SWSW | E2 14 | 13 2S | 6W | MADISON |
| 3 | 77.00 07.25 | | SESE | NE 23 | 14 2S | 6W | MADISON |
| 4 | 7.00 00.75 | SESWSW | NWNWNW | 24 14 | 2S | 6W | MADISON |
| Total: | 248.00 25.00 | | N2NE | | 23 2S | 6W | MADISON |
| | 39.50 | | | | | | |

6. Claim 41G 110293-00 received an issue remark providing notice that the point of diversion and ditch name were modified during claims examination. Both the point of diversion and ditch name were addressed by the parties in their Stipulation. The remark has served its purpose and should be removed from the claim abstract.

CONCLUSIONS 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. 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.

The evidence and information attached to the Stipulation, as well as the information in the claim file, overcome the prima facie status of 41G 110293-00. The requested modifications to the point of diversion, ditch name, and means of diversion are well supported and should be accepted by the Court.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. 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. § 85-2-248(3), MCA. The issue remark appearing on claim 41G 110293-00 is a notice-type issue remark. The remark has served

its purpose of providing notice. The remark does not overcome the prima facie status of the claim and should be removed.

3. The claimant of a water right claim may waive the advantage of § 85-2-227, MCA by requesting a reduction or limitation of an element of a water right claim. The water court may accept a claimant's requested reduction or limitation without further presentation of evidence unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R. The changes requested to the place of use for claim 41G 110293-00 constitute reductions to the claim and should be accepted by the Court.

RECOMMENDATIONS

1. Claim 41G 110293-00 should be modified as provided above.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the recommended corrections have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail:

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

Water Right Number: 41G 110293-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JEFFERSON ACRES PROPERTY OWNERS ASSN
% KATHLEEN C KELTNER
1 KELTNER LN
SILVER STAR, MT 59751

Priority Date: DECEMBER 31, 1871

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 6.25 CFS

FLOW RATE FOR THIS RIGHT IS LIMITED TO THE HISTORIC CAPACITY OF THE DIVERSION STRUCTURE AND CONVEYANCE SYSTEM.

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: 39.50

Source Name: JEFFERSON 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 | | SESWW | 23 | 2S | 6W | MADISON |

Period of Diversion: MAY 1 TO SEPTEMBER 30

Diversion Means: DITCH

Ditch Name: BONAWITZ DITCH

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 | 0.25 | | SWNWSW | 13 | 2S | 6W | MADISON |
| 2 | 6.25 | | SWSW | 13 | 2S | 6W | MADISON |
| 3 | 7.25 | | SESE | 14 | 2S | 6W | MADISON |
| 4 | 0.75 | | SESWSE | 14 | 2S | 6W | MADISON |
| 5 | 25.00 | | N2NE | 23 | 2S | 6W | MADISON |

Total: 39.50