

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

CLAIMANTS: Joann M. Dale; Richard T. Dale

CASE 41G-0552-R-2022
41G 24631-00
41G 24632-00
41G 118195-00

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 24631-00, 41G 24632-00, and 41G 118195-00 appeared in the 41G Preliminary Decree issued February 15, 2018. The claims did not receive any objections or notices of intent to appear. The claims did receive issue remarks from the DNRC that must be resolved by the Water Court

2. Each claim received the following issue remark:

THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 41G 118195-00, 41G 24632-00, 41G 24631-00.

A filing deadline was set for the Dales to indicate how the issue remarks should be resolved. On March 15, 2024, claimants filed a Notice of Filing of Information to Resolve Issue Remarks. The filing indicates that the Dales agree that all three claims are based on the same Notice of Appropriation – the Moffet NOA for 3.00 cfs of the waters of Moffet Springs. The language of the Moffet NOA indicates that the appropriation was used for domestic, mining, irrigation, and other useful and beneficial purposes.

In their March 15, 2024 filing, the Dales agree that the combined flow rate of the three claims cannot exceed 3.00 cfs and request the following information remark be added to the claims:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT SHARE A COMBINED FLOW RATE OF 3.00 CFS AND AT NO TIME SHALL THE COMBINED FLOW RATES DIVERTED UNDER THE FOLLOWING CLAIMS EXCEED 3.00 CFS. 41G 24631-00, 41G 24632-00, 41G 118195-00.

Claim 41G 118195-00 appeared in the Basin 41G Preliminary Decree with a flow rate of 3.03 cfs. To resolve the issue remark and consistent with the requested flow rate information remark, the flow rate for claim 41G 118195-00 should be reduced to 3.00 cfs. The reduction to the flow rate for claim 41G 118195-00 and the addition of the flow rate information remark to all three claims resolves the overfiled appropriation issue remark appearing on the claims. The overfiled notice of appropriation issue remark should be removed from the claims.

3. Claim 41G 118195-00 received the following additional issue remarks:
THE CLAIMED PLACE OF USE AND ACRES IRRIGATED MAY BE QUESTIONABLE.
REVIEW OF THE AVAILABLE DATA APPEARS TO INDICATE 58.00 ACRES
IRRIGATED.

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM
ACRES ISSUE.

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM
ACRES ISSUE.

Claim 41G 118195-00 appeared in the 41G Preliminary Decree with an 80-acre place of use. The information found in the issue remarks and the claim file does not overcome the prima facie status of claim 41G 118195-00. There are several explanations why the water resource survey may show less acres irrigated than claimed, including the time of year the survey was conducted, the particular irrigation season that year, and human error. Without corroborating evidence, or any additional information concerning which acreage was identified as irrigated versus not irrigated, the issue remarks do not overcome the prima facie status of the claimed place of use. Accordingly, no modification to the place of use, flow rate, or volume is required. The issue remarks should be removed and considered resolved.

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.

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.

3. 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 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. If it meets this standard, then the burden of proof shifts to the claimant to prove his or her claim's validity. An issue remark is weighed like any other evidence. When an issue remark is placed on a claim, "the information resulting in the issue remark and the issue remark *must be weighed against* the claimed water right." § 85-2-247(2), MCA (emphasis added). The Water Court shall review an issue remark "to determine if information in the claim file or information obtained by the court provides a sufficient basis to resolve the identified issue remark or to determine if the issue remark can be corrected as a clerical error." § 85-2-248(3), MCA. Determining whether the factual issues raised by an issue remark have been resolved requires the exercise of judicial discretion.

Id.

4. While Water Resource Survey information is generally accepted by the court as relevant evidence of historical use, conflicting evidence from other credible historical sources have been known to overcome the weight of a particular Water Resource Survey. *Dernbauch v. Bell (Dry Creek Decision)*, 2007 Mont. Water LEXIS 1 (Dec. 28, 2007) at 12-13.

5. The issue remarks concerning the place of use and flow rate of claim 41G 118195-00 do not overcome the prima facie status of the claim. The evidence in the claim file does not show by a preponderance of the evidence that the place of use, volume, or flow rate are incorrect. Accordingly, the issue remarks should be removed.

6. If a claimant agrees to reduce or limit an element of a claim, the water court may accept the claimant's requested reduction or limitation without further presentation of evidence, unless there is an unresolved issue remark on the claim, in which case § 85-2-248, MCA must be applied. Rule 17(c), W.R.Adj.R.

The claimants' request to add the flow rate information remarks to claims 41G 24631-00, 41G 24632-00, and 41G 118195-00 is considered a requested limitation and may be accepted without further presentation of evidence. The addition of the information remarks resolves the overfiled notice of appropriation issue remarks appearing on the claims.

RECOMMENDATIONS

1. The issue remarks should be removed from claims 41G 24631-00, 41G 24632-00, and 41G 118195-00.
2. The requested flow rate information remarks should be added to each claim.

Post Decree Abstracts of Water Right Claims are 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 24631-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JOANN M DALE
PO BOX 262
TWIN BRIDGES, MT 59754-0262

RICHARD T DALE
PO BOX 262
TWIN BRIDGES, MT 59754-0262

Priority Date: MAY 25, 1916

Type of Historical Right: FILED

Purpose (Use): DOMESTIC

Flow Rate: 22.50 GPM

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT SHARE A COMBINED FLOW RATE OF 3.00 CFS AND AT NO TIME SHALL THE COMBINED FLOW RATES DIVERTED UNDER THE FOLLOWING CLAIMS EXCEED 3.00 CFS. 41G 24631-00, 41G 24632-00, 41G 118195-00.

Volume: 1.50 AC-FT

Households: 1

Maximum Acres: 0.25

***Source Name:** SPRING, UNNAMED TRIBUTARY OF BEAR GULCH

Source Type: GROUNDWATER
ALSO KNOWN AS MOFFET SPRING

***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		SESESE	34	2S	5W	MADISON

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: PIPELINE

Period of Use: APRIL 1 TO NOVEMBER 1

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		SESESE	34	2S	5W	MADISON

Total: 0.25

Remarks:

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.

24631-00 24632-00

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

Water Right Number: 41G 24632-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JOANN M DALE
PO BOX 262
TWIN BRIDGES, MT 59754-0262

RICHARD T DALE
PO BOX 262
TWIN BRIDGES, MT 59754-0262

Priority Date: MAY 25, 1916

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.

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT SHARE A COMBINED FLOW RATE OF 3.00 CFS AND AT NO TIME SHALL THE COMBINED FLOW RATES DIVERTED UNDER THE FOLLOWING CLAIMS EXCEED 3.00 CFS. 41G 24631-00, 41G 24632-00, 41G 118195-00.

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 BEAR GULCH

Source Type: GROUNDWATER
ALSO KNOWN AS MOFFET SPRING

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		SESESE	34	2S	5W	MADISON

Period of Diversion: JUNE 15 TO OCTOBER 1

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JUNE 15 TO OCTOBER 1

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			SESESE	34	2S	5W	MADISON

Remarks:

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.

24631-00

24632-00

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

Water Right Number: 41G 118195-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JOANN M DALE
PO BOX 262
TWIN BRIDGES, MT 59754-0262

RICHARD T DALE
PO BOX 262
TWIN BRIDGES, MT 59754-0262

Priority Date: MAY 25, 1916

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.00 CFS

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT SHARE A COMBINED FLOW RATE OF 3.00 CFS AND AT NO TIME SHALL THE COMBINED FLOW RATES DIVERTED UNDER THE FOLLOWING CLAIMS EXCEED 3.00 CFS. 41G 24631-00, 41G 24632-00, 41G 118195-00.

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: 80.00

Source Name: SPRING, UNNAMED TRIBUTARY OF BEAR GULCH

Source Type: GROUNDWATER

ALSO KNOWN AS MOFFET SPRING

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		N2SESE	34	2S	5W	MADISON

Period of Diversion: MAY 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: MAY 1 TO OCTOBER 1

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	80.00		S2SE	34	2S	5W	MADISON

Total: 80.00

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.

24633-00

118195-00