

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: Flattop Ranch LLC

NOTICE OF INTENT TO APPEAR: City of Three Forks

CASE 41G-0618-R-2024
41G 195486-00

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, conclusion 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 195486-00 is an irrigation claim owned by Flattop Ranch LLC. It appeared in the 41G Preliminary Decree with issue remarks. It did not receive

objections during the 41G Preliminary Decree objection period. The City of Three Forks filed a Notice of Intent to Appear to claim 41G 195486-00.

2. The DNRC placed the following issue remarks on claim 41G 195486-00 during the reexamination process:

CLAIM FILED LATE 07/26/82. IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

THE CLAIMED PERIOD OF USE EXCEEDS THE USUAL GROWING SEASON FOR THIS CLIMATIC AREA WHICH IS APRIL 15 TO OCTOBER 15.

THE PERIOD OF DIVERSION MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF THE PERIOD OF USE ISSUE.

3. The originally claimed period of use for claim 41G 195486-00 was year round (January 1 – December 31). Because claim 41G 195486-00 is for sprinkler irrigation, it is unlikely that it is capable of being diverted and used year-round. A filing deadline was set for the claimant to address the period of use and period of diversion issue remarks. The order setting the filing deadline stated that if nothing was filed by the deadline, the period of use and period of diversion would be modified to the usual growing season for the climactic area (April 15 – October 15).

4. The following issue remark is considered a notice remark that does not require further proceedings:

CLAIM FILED LATE 07/26/82. IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

A notice issue remark provides notice to claimants and other water users of certain aspects of a claim; if the claim does not receive any objections, the remark may be removed.

5. The period of use and the period of diversion should be modified from year round to April 15 – October 15. The issue remarks appearing on the claim should be removed.

6. The only issues before the court are the period of use and period of diversion elements that were raised by the issue remarks appearing on claim 41G 195486-00. Those remarks are resolved based on the recommended changes to the period of use and period of diversion. Because there are no other issues before the court, there are no issues for the City of Three Forks to participate in as an NOIA party.

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. The period of use and period of diversion issue remarks are sufficient to overcome the prima facie status of the claim. The period of use and period of diversion should be corrected based on the information in the issue remarks.

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 notice issue remark served its purpose and may be removed.

3. If a claimant 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 modification of the claim to conform with data provided by the department, information obtained by the court, or information included in an objection. Rule 22, W.R.Adj.R. Claimant failed to respond to the court's order setting filing deadline. The claim will be modified to conform with the best information before the court.

RECOMMENDATIONS

1. The issue remarks should be removed from claim 41G 195486-00.
2. The period of use and period of diversion for claim 41G 195486-00 should be corrected as provided above.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

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

Water Right Number: 41G 195486-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: FLATTOP RANCH LLC
PO BOX 531
THREE FORKS, MT 59752-0531

Priority Date: DECEMBER 31, 1873

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 07/26/1982 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 58.00 GPM

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: 52.00

Source Name: GROUNDWATER

Source Type: GROUNDWATER

ALSO KNOWN AS THE LANNING PLACE WELL

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		NWNENE	18	2N	2E	BROADWATER

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: WELL

Period of Use: APRIL 15 TO OCTOBER 15

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	40.00		NWNE	18	2N	2E	BROADWATER
2	12.00		NENE	18	2N	2E	BROADWATER
Total:	52.00						

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.

195486-00

195489-00

195490-00