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FILED

JUN 22 2020

Montana Water Court

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

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CLAIMANTS: Beverly Malyevac; Gary F. Malyevac; Wade J. Malyevac  
OBJECTOR: United States of America (Forest Service)

**41G-R231**  
41G 132452-00  
41G 132454-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. Because this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this 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 132452-00 and 41G 132454-00 appeared in the Preliminary Decree for the Jefferson River Basin (Basin 41G) dated February 15, 2018. Each claim received an objection from the United States Department of Agriculture Forest Service (United States). The claims were consolidated into Case 41G-R231 to resolve the objections and issue remark.

### FINDINGS OF FACT

1. Claims 41G 132452-00 and 41G 132454-00, owned by Beverly Malyevac, Gary Malyevac, and Wade Malyevac, are decreed flood irrigation rights to the surface water of Little Pipestone Creek.

2. The United States filed objections to the place of use/maximum acres and point of diversion/means of diversion of each claim.

3. On May 11, 2020, the Court received a Stipulation to Resolve Objections (Stipulation), signed by all parties to this case.

4. The Stipulation states that the legal land description of Point of Diversion ID No. 1 for claim 41G 132454-00 should be corrected as follows:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSESE <u>SESWSE</u>	17	1N	6W	Jefferson

5. This correction locates the point of diversion closer to the place of use, on property owned by Claimant Wade Malyevac.

6. The Stipulation states that the points of diversion and places of use for the above-captioned claims consist solely of private lands – they include no federal lands.

The Stipulation proposes adding the following information remarks to the claims:

THE DESCRIPTION OF POINT OF DIVERSION ID NO. 1 DOES NOT INCLUDE U.S. FOREST SYSTEM LAND

THE DESCRIPTION OF PLACES OF USE ID NO.S 1-3 DO NOT INCLUDE US FOREST SYSTEM LAND.

7. The Stipulation states that upon entry of a ruling and final order in this case reflecting the above modifications to these claims, the United States' objections shall be deemed resolved.

8. Claim 41G 132454-00 also received an issue remark providing notice that the DNRC modified the ditch name of the claim during its examination in preparation of the Preliminary Decree.

#### PRINCIPLES OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA.

2. The Water Court is not bound by settlement agreements, and all such agreements are subject to review and approval by the Court. Rule 17(a), W.R.Adj.R. Settlement agreements which seek to enlarge an element of a water right must be supported by sufficient evidence to meet the burden of proof applicable to that right. Rule 17(b), W.R.Adj.R. The burden of proof does not need to be met where changes proposed in a settlement agreement reduce or limit an element of a water right. Rule 17(c), W.R.Adj.R.

3. 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.2.

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.

#### CONCLUSIONS OF LAW

1. The proposed correction to claim 41G 132454-00 overcomes the prima facie status of the claim.

2. The proposed information remarks limit elements of the water rights and can be added to the claims without analysis of the burden of proof.

3. The ditch name issue remark has served its notice purpose and may be removed from claim 41G 132454-00.

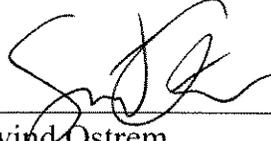
4. The corrections and modifications described in this Master's Report resolve the United States' objections to the claims in this case.

#### RECOMMENDATIONS

Upon review of the case file, the record in this case, and the evidence presented, the legal land description of claim 41G 132454-00 should be corrected as described in Finding of Fact No. 4 above, the proposed information remarks should be added to the claims, and the issue remark should be removed.

A post-decree abstract of each water right claim reflecting the recommended changes is attached to this Report.

DATED this *22<sup>nd</sup>* day of *June*, 2020.

  
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Eyvind Ostrem  
Water Master

**Service via Electronic Mail**

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