

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

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CLAIMANT: Fitzgerald Ranch Inc.

OBJECTOR: State of Montana Department of Fish Wildlife & Parks

**41G-R407**  
41G 95755-00  
41G 95757-00  
41G 95759-00

**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 95755-00, 41G 95757-00, and 41G 95759-00 appeared in the Preliminary Decree for the Jefferson River Basin (Basin 41G) dated February 15, 2018. Each claim received one or more issue remarks and an objection from the State of Montana Department of Fish, Wildlife, and Parks. The claims were consolidated into Case 41G-R407 to resolve the issue remarks and objections.

### FINDINGS OF FACT

1. Claims 41G 95755-00, 41G-95757-00, and 41G 95759-00, owned by Fitzgerald Ranch Inc., each received an objection from the State of Montana Department of Fish, Wildlife, and Parks (FWP).
2. On April 27, 2020, the Court received a Settlement Stipulation, signed by both parties, by which the Claimant agreed to withdraw claim 41G 95757-00, and FWP agreed to withdraw its objections to the remaining two claims (41G 95755-00 and 41G-95759-00).
3. Claims 41G 95755-00 and 41G-95759-00 each received an issue remark providing notice that the source names were changed by the DNRC 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. 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 withdrawal of claim 41G 95757-00 and FWP's objections to the remaining claims do not enlarge these water rights. The Settlement Stipulation is accepted.

2. The intent of the Claimant to withdraw claim 41G 95757-00 is unambiguous, as is the intent of FWP to withdraw its objections to claims 41G 95755-00 and 41G-95759-00.

3. The source name issue remarks have served their notice purpose and may be removed from the claims.

#### RECOMMENDATIONS

1. Upon review of the case file, the record in this case, and the evidence presented, claim 41G 95757-00 should be dismissed.

2. The objections to claims 41G 95755-00 and 41G-95759-00 should be deemed withdrawn, and the source name issue remarks on those claims should be removed.

Post-decree abstracts of the water right claims reflecting the recommended changes and dismissal are attached to this Report.

DATED this *2nd* day of *June*, 2020.

  
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Eyvind Ostrem  
Water Master

**Service via USPS Mail**

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