

Montana Water Court
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ELECTRONICALLY FILED

41G-0172-R-2020

July 16, 2021

Montana Water Court

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

* * * * *

CLAIMANTS: Beth Morgan; Hal L. Morgan

NOTICE OF INTENT TO APPEAR: Hulbert Gulch Water Co.

41G-0172-R-2020
41G 195565-00

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

Water right claim 41G 195565-00, appeared in the Preliminary Decree for the Jefferson River Basin (Basin 41G) issued February 15, 2018. The claim received issue remarks from the Department of Natural Resources and Conservation (DNRC) and a Notice of Intent to Appear (NOIA) from Hulbert Gulch Water Co. The claim was consolidated into case 41G-172-R-2020 to resolve this issue remarks.

FINDINGS OF FACT

1. Claim 41G 195565-00 is an irrigation claim for use in the S2SW of Section 1, T2S, R6W, Madison County. It appeared in the Preliminary Decree with its source listed as Hulbert Creek, and received the following issue remarks:

THIS CLAIM REPRESENTS ISSUES OF FACT WHICH WERE PREVIOUSLY SUSTAINED BY THE WATER COURT. THE SOURCE APPEARS TO BE BUMBY GULCH, NOT HULBERT CREEK.

IT IS UNCLEAR IF THERE IS AN EXCHANGE OF WATER BETWEEN THE SOURCE OF THIS WATER RIGHT, HULBERT CREEK, AND THE JEFFERSON

2. On January 22, 2021, the Court ordered the Claimants to work with the DNRC to address these issue remarks. The Claimants met with Kara Huyser, Water Resource Specialist with the DNRC, and Ms. Huyser filed her memorandum (DNRC Memo) with the Court on May 21, 2021. The DNRC Memo is based on information in the claim file; USDA Aerial Imagery 1979 – photos 178-136 and 178-205; Topographic Quadrangle: Waterloo – 1996 and Silver Star –1996; Teleconference and follow-up email with Beth Morgan dated May 7, 2021; and a hand drawn map filed by Beth Morgan on May 21, 2021.

3. The DNRC Memo states that the DNRC believes the source name for this claim should be modified as follows:

Source Name: ~~Hulbert Creek~~ **Bumby Gulch**

4. According to the DNRC Memo, the hand drawn map provided by the Claimants shows water from Bumby Gulch flowing south toward Dry Boulder Creek and

then to the Jefferson River where it is exchanged for Jefferson River water, which is diverted into Creeklyn Ditch and conveyed to the place of use.

5. The Court ordered the parties to inform the Court by June 24, 2021 if they disagreed with the DNRC's recommended source name modification. It informed the parties that if nothing were filed, it would conclude they agreed with the DNRC's proposed source name modification. On June 24, 2021, NOIA party Hulbert Gulch Water Co. filed its response stating that the source name modification resolves its NOIA in this matter. The Claimants did not file a response.

6. Ms. Huyser notes in her memo that the DNRC has remaining questions as to how water is conveyed from the source to the Jefferson, and whether any water is diverted from Hellroaring Creek. However, the Claimant, NOIA party, and DNRC all agree that the source for this right is Bumby Gulch. The Claimants have not indicated to the Court that Hellroaring Creek should be added as a source.

PRINCIPLES OF LAW

1. 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.

2. 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.

3. 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.

CONCLUSIONS OF LAW

1. The source name issue remark overcomes the prima facie status of the statement of claim. The source name should be modified as described in Finding of Fact No. 3, above. This modification resolves the source name issue remark and Hulbert Gulch Water Co.'s NOIA.

2. The DNRC Memo supports that the water withdrawn from the Jefferson via Creeklyn Ditch for use at the place of use is from Bumby Gulch. The water exchange

issue remark questions the exchange of water between the claim's current source, Hulbert Creek, and the Jefferson River. After modifying the source to Bumby Gulch, the question regarding Hulbert Creek will be moot and the issue remark is therefore resolved.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court modify the source of claim 41G 195565-00 to Bumby Gulch, remove the issue remarks, and dismiss the NOIA.

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

Eyvind Ostrem
Water Master

Service via USPS Mail

Beth Morgan
Hal L Morgan
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Service via Electronic Mail

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From: [Beth Morgan](#)
To: [McCarver, Kara](#)
Subject: [EXTERNAL] Bumby Gulch
Date: Friday, May 21, 2021 12:59:16 PM
Attachments: [ATT00001.txt](#)

Kara,

Bumby Gulch is East of us, it's waters flow down the ravine under ground in places and above ground in places. The water flows into the Jefferson River.

The Creeklyn Ditch head gate is five miles to the south of us. At our property it crosses under the road onto our property and continues on North. Our property is the blue dot. We pump it out of the ditch and onto our ground.

Any questions please call 406-287-9189

Thank you,

Beth and Hal Morgan



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

Water Right Number: 41G 195565-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: BETH MORGAN
PO BOX 724
SILVER STAR, MT 59751

HAL L MORGAN
PO BOX 724
SILVER STAR, MT 59751

Priority Date: SEPTEMBER 18, 1905
Type of Historical Right: FILED
Purpose (Use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: 171.00 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: 10.00
Source Name: BUMBY GULCH
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		SE	13	2S	5W	MADISON

Period of Diversion: APRIL 1 TO NOVEMBER 30
Diversion Means: HEADGATE
Period of Use: APRIL 1 TO NOVEMBER 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	10.00		S2SW	1	2S	6W	MADISON
Total:	10.00						

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.

195565-00 195566-00 195567-00