

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

* * * * *

CLAIMANTS: Beth Morgan; Hal L. Morgan

OBJECTOR: United States of America (Bureau of Land Management)

41G-0174-R-2020
41G 195569-00

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 195569-00 appeared in the Preliminary Decree for the Jefferson River (Basin 41G) issued on February 15, 2018. Claim 41G 195569-00 received an issue remark from the Department of Natural Resources and Conservation (DNRC) and an objection from the United States Bureau of Land Management (United States). The claim was consolidated into case 41G-174-R-2020 to address the objection and issue remark.

FINDINGS OF FACT

1. Water right claim 41G 195569-00 is a claim to a commercial and domestic groundwater well.

2. The claim appeared in the Preliminary Decree with a point of diversion in the NENENW of Section 12, T2S, R6W, Madison County and a place of use in the NENENW of Section 6. This located the place of use for this 30 gpm well several miles from the point of diversion, on property owned by the United States Bureau of Land Management (United States).

3. The United States objected to the claim and on March 10, 2021, filed a Stipulation to Resolve Objection, signed by the United States and the Claimants, which requests the following modifications to the claim's 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			NENENW	6	1N	3W	Madison
				<u>12</u>			

The Stipulation also requests that an information remark be added to the claim stating that, "the description of the place of use is for private use and does not include federal land."

4. This requested modification would locate the place of use for this commercial and groundwater well at the same place as the point of diversion. There is no explanation in the claim file as to why the place of use was originally claimed in Section 6, miles from the point of diversion and on United States property.

5. Water right claim 41G 195569-00 also received the following issue remark:

THE PURPOSE OF THIS CLAIM IS UNCLEAR AS MULTIPLE PURPOSES HAVE BEEN CLAIMED. THE CLAIMED PURPOSES INCLUDE COMMERCIAL AND DOMESTIC. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

6. The Court requested that the Claimants provide information if they believed any implied claims should be generated to reflect additional purposes of this claim. On May 18, 2021, the Claimants filed a signed Statement supporting historical use of this water right claim for commercial and domestic purposes from a single well. The claimants did not request any additional claims be generated.

7. The April 27, 1982 Statement of Claim and DNRC notes in the claim file support that this claim was historically used for both commercial and domestic uses.

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 statement of claim for an existing water right or an amended claim of an existing right constitutes prima facie proof of its content until the issuance of a final decree. § 85-2-227(1), MCA. Anyone seeking to modify a claim or amended claim has the burden of showing by a preponderance of the evidence that the elements of the claim are incorrect. Preponderance of the evidence is a relatively modest standard that requires a party to prove the existence of a particular fact is more probable than not. *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 248 P.3d 628. This is the applicable burden of proof for every assertion that a claim is incorrect, regardless of whether the party seeking

the modification is an adverse party or the claimant objecting to its own claim. Rule 19 W.R.Adj.R.; *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558.

4. In addition to the specific water right elements that must be included in a final decree, the Water Court also may include "any other information necessary to fully define the nature and extent of the right." § 85-2-234(6)(i), MCA. This information typically takes the form of an "information remark." The purpose of an information remark is to "provide facts regarding prior use of a right that are critical to its administration in accord with historical use." Order Adopting Master's Report in Part, Water Court Case 76G-A8, ¶10 (Oct. 29, 2014).

5. 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.

6. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. § 85-2-247(2), MCA. 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. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

7. No statute, rule or case prevents a party from identifying multiple purposes on one abstract. Such consolidations are permissible if they can be accomplished without sacrificing clarity, and without leading to the potential for abuse through expansion of water rights beyond their historical limits. Order Vacating Master's Order and Approving Stipulation, Water Court Case 40J-99 at 14-15 (Nov. 16, 2018).

CONCLUSIONS OF LAW

1. The place of use modification requested in the Stipulation is supported by a preponderance of the evidence and overcomes the prima facie status of the claim. The proposed information remark assists in administration of the right. Modification of the claim in accordance with the Stipulation as described above resolves the United States' Objection to this claim.

2. The purpose issue remark fails to overcome the prima facie status of this claim for commercial and domestic uses and should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court modify claim 41G 195569-00 as described in Finding of Fact No. 3 above and remove the issue remark from the claim.

A copy of the Stipulation, Statement of Beth and Hal Morgan, and a 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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Silver Star, MT 59751

Service via Electronic Mail

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From: [Beth Morgan](#)
To: [Watercourt \(Bozeman\)](#)
Subject: [EXTERNAL] 41G-01774-R-2020
Date: Tuesday, May 18, 2021 11:37:57 AM

41G-0174-R-2020

May 18, 2021

Montana Water Court

This communication is in regards to my telephone conversation with Eyvind Ostrem, Water Master, on May 19, 2021 concerning water right 41G-0174-R-2020 41G 195569-00.

Historically this water right has been used by Hal and Beth Morgan since 1993 for both domestic and commercial use. Before us the previous owners also used it for domestic and commercial use. It is the only cold water well on this property.

Barkell's Inc. were the previous owners and before that the Barkell family owned property was homesteaded in the 1860s. There are several homes that it is piped to, rental cabins, a commercial greenhouse, livestock water, and at times to cool the pools. It has also been used to water lawns.

I hope this answers any and all questions about this water right. If not please feel free to contact us. (406) 287-9189
hbmorgan@aol.com

Sincerely,
Beth and Hal Morgan

Sent from my iPhone

LEIF M. JOHNSON, Acting U.S. Attorney
District of Montana

ELECTRONICALLY FILED

JEAN E. WILLIAMS, Acting Assistant Attorney General
Environment & Natural Resources Division

41G-0174-R-2020

March 10, 2021

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Montana Water Court

ATTORNEYS FOR UNITED STATES OF AMERICA,
United States of America – Bureau of Land Management

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

CLAIMANTS: Beth Morgan; Hal L. Morgan

CASE 41G-0174-R-2020
41G 195569-00

OBJECTOR: United States of America (Bureau of Land Management)

STIPULATION TO RESOLVE OBJECTION

This Stipulation, entered into by the United States of America, Bureau of Land Management (“United States”), and Claimants Beth Morgan and Hal L. Morgan (“Claimants”), is for the purpose of resolving the United States’ objection to Water Right Claim No. 41G 195569-00.

RECITALS

A. Pursuant to Mont. Code Ann. § 85-2-221, Claimants’ predecessor timely filed a Statement of Claim for 41G 195569-00 with the Department of Natural Resources and Conservation (“DNRC”).

B. Pursuant to Mont. Code Ann. § 85-2-233, the United States timely filed a Notice of Objection to Statement of Claim No. 41G 195569-00 as it appeared on the Preliminary Decree for Basin 41G.

C. Statement of Claim No. 41G 195569-00, as it appeared in the Preliminary Decree for Basin 41G, claimed a commercial and domestic groundwater water right from Jefferson River, via a well at a point of diversion in the NENENW Section 12, Township 2S, Range 6W, and a place of use within NENENW Section 6, Township 2S, Range 6W.

D. The legal land description for the claimed Place of Use includes federal land managed by the Bureau of Land Management. The claimed Place of Use ID No. 1 should be revised to exclude federal land. An informational remark should also be added to the claim to clarify that the use occurs on private land.

E. In the interest of resolving this case without the need for further litigation, Claimants and the United States stipulate and agree to the following:

AGREEMENT

1. The Place of Use ID No. 1 should be amended as follows:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENENW	12 6	2S	6E	MADISON

2. An informational remark should be added as follows:

“THE DESCRIPTION OF THE PLACE OF USE IS FOR PRIVATE USE AND DOES NOT INCLUDE FEDERAL LAND.”

3. The proposed abstract, attached as **Exhibit 1**, accurately reflects the stipulated amendments to the claim.

4. Upon entry of a ruling and final order in this case reflecting the amendments specified above, the United States' objections to 41G 195569-00 shall be deemed resolved, provided that such order(s) do not expand or change other substantive elements of the claim.

5. This Stipulation is the compromise of disputed water claims and is not to be construed as an admission against the interests of any party.

6. The terms of this Stipulation are binding on the parties, their successors, and assignees. Nothing in this Stipulation shall create any right, claim, cause of action, objection, defense, or other remedy in any person not a party to the Stipulation.

7. Each party agrees to bear its own costs and attorney fees arising from the negotiation and execution of the Stipulation and in proceedings before the Montana Water Court regarding this case.

8. Each undersigned party entered into and executed this Stipulation voluntarily, in good faith, and without any fraud, misunderstanding, misrepresentation, overreaching, duress, or undue influence, whatsoever.

9. This Stipulation may be executed by the parties in counterparts, each of which when executed and filed with the Montana Water Court shall be an original, but all of which together shall constitute one instrument.

10. The parties agree that this document (§§ 1-10) embodies the entire Stipulation of the parties.

IT IS SO AGREED AND STIPULATED on the date last entered below:

LEIF M. JOHNSON
Acting U.S. Attorney, District of Montana

JEAN E. WILLIAMS
Acting Assistant Attorney General

Dated: _____, 2021

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ATTORNEYS FOR UNITED STATES OF AMERICA,
Bureau of Land Management

Dated: 2-23, 2021

Beth Morgan
Beth Morgan
PO Box 724
Silver Star, MT 59751

Dated: 2-23, 2021

Hal L. Morgan
Hal L. Morgan
PO Box 724
Silver Star, MT 59751

Dated: 3/10, 2021



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Dated: _____, 2021

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Dated: _____, 2021

Hal L. Morgan
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: **41G 195569-00** STATEMENT OF CLAIM

Version: 4 -- 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: DECEMBER 31, 1945

Type of Historical Right: FILED

Purpose (Use): COMMERCIAL
 THIS RIGHT IS ALSO USED FOR DOMESTIC PURPOSES.

Flow Rate: 30.00 GPM

Volume: 2.30 AC-FT

Source Name: GROUNDWATER

Source Type: GROUNDWATER

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		NENENW	12	2S	6W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

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			NENENW	12	2S	6W	MADISON

THE DESCRIPTION OF THE PLACE OF USE IS FOR PRIVATE USE AND DOES NOT INCLUDE FEDERAL LAND.

Remarks:

REPLACEMENT WELL-AUTHORIZATION TO CHANGE ISSUED 11/20/1991. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE MADE AFTER FINAL DECREE.