

41G-0197-R-2021

July 29, 2021

Montana Water Court

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

* * * * *

CLAIMANT: Nelson Spring Creek Ranch

OBJECTOR: Nelson Spring Creek Ranch

NOTICE OF INTENT TO APPEAR: United States of
America (Bureau of Reclamation)

CASE 41G-0197-R-2021

41G 135047-00

41G 195653-00

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 claims 41G 135047-00 and 41G 195653-00 appeared in the Preliminary Decree for the Jefferson River Basin (Basin 41G) dated February 15, 2018. Each claim received an objection from Claimant Nelson Spring Creek Ranch and a notice of intent to appear from the United States Bureau of Reclamation (United States). These claims were consolidated into Case 41G-197-R-2021 to resolve the objections.

FINDINGS OF FACT

Claim 41G 195653-00:

1. Water right claim 41G 195653-00 is an irrigation right to water from the Jefferson River diverted first through the Creeklyn Ditch and then through secondary points of diversion. The Statement of Claim filed April 8, 1982 lists the point of diversion as the NENWNW of Section 26, T2S, R6W.

2. A March 9, 1994 Master's Report found that based on a DNRC field visit and an Affidavit from Nelson Creek Ranch, the historically accurate point of diversion of the claim was the NWSWNW of Section 26, T2S, R6W. It does not appear the point of diversion was ever modified accordingly. Information before the Court does not explain why this correction was never made.

3. The Claimant objected to the claim and on June 15, 2021, filed a Motion to Correct Point of Diversion, indicating the point of diversion is Creeklyn Ditch and should be modified as follows:

Point 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		<u>NENWNW</u> <u>NWSWNW</u>	26	2S	6W	Madison

Claim 41G 135047-00:

4. Claim 41G 135047-00 is an irrigation claim based on a filed right to water diverted through Weingart ditch. In addition to the Weingart ditch diversion, the claim appeared in the Preliminary Decree with a second point of diversion in the NENWNW of

Section 26, T2S, R6W, Madison County – the same location the Claimant identified as the diversion for Creeklyn Ditch in the Statement of Claim for claim 41G 195653-00.

5. The Claimant filed its Objection on June 27, 2018, stating “POD #2 is Creeklyn Ditch. Legal land description should be corrected to: NWSWNW of Section 26, T2S, R6W.” On June 15, 2021 the Claimant filed its Motion to Correct Point of Diversion reiterating that it believes point of diversion no. 2 should be corrected as described above. The point of diversion for that claim should be modified as follows to reflect the location of the diversion into Creeklyn Ditch:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWSE	31	1S	5W	Madison
2		NENWNW <u>NWSWNW</u>	26	2S	6W	Madison

6. The United States filed a statement on June 28, 2021, informing the Court that the Motion to Correct Point of Diversion’s proposed modifications resolve its NOIA in the matter.

PRINCIPLES OF LAW

1. 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. The Water Court may correct a clerical mistake or a mistake arising from oversight or omission where one is found in a part of the record. Rule 60(a), M.R.Civ.P.

CONCLUSIONS OF LAW

1. The point of diversion for claim 41G 195653-00 was not modified as directed by the 1994 Master’s Report due to a clerical mistake. The claim should be modified as described in Finding of Fact No. 3 above to reflect the correct diversion into Creeklyn Ditch.

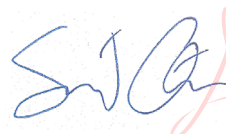
2. A preponderance of the evidence supports modification of point of diversion ID no. 2 of claim 41G 135047-00 as described in Finding of Fact No. 5 above to reflect the historical diversion through Creeklyn Ditch.

3. Claimant Nelson Spring Creek Ranch's objection and the United States' NOIA are resolved upon implementation of the modifications described above.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends the changes outlined above.

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

 Digitally signed by
Eyvind Ostrem
Date: 2021.07.27
14:27:40 -06'00'

Eyvind Ostrem
Water Master

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

Water Right Number: **41G 135047-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: NELSON SPRING CREEK RANCH
 PO BOX 715
 SILVER STAR, MT 59751

Priority Date: JULY 1, 1888

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 14.24 CFS

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:** 153.00

Source Name: JEFFERSON RIVER

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		SESWSE	31	1S	5W	MADISON

Period of Diversion: APRIL 15 TO NOVEMBER 15

Diversion Means: HEADGATE

2		NWSWNW	26	2S	6W	MADISON
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Period of Diversion: APRIL 15 TO NOVEMBER 15

Diversion Means: HEADGATE

Period of Use: APRIL 15 TO NOVEMBER 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	8.00		SWNESE	31	1S	5W	MADISON
2	4.00		SENESE	31	1S	5W	MADISON
3	1.00		NWNESE	31	1S	5W	MADISON
4	6.00		NENESE	31	1S	5W	MADISON
5	7.00		NESWNW	32	1S	5W	MADISON
6	3.50		SWSWNW	32	1S	5W	MADISON
7	10.00		SESWNW	32	1S	5W	MADISON
8	7.50		NWNWSW	32	1S	5W	MADISON
9	10.00		NENWSW	32	1S	5W	MADISON

10	2.00	SWNWSW	32	1S	5W	MADISON
11	6.00	SENWSW	32	1S	5W	MADISON
12	1.00	NESESW	32	1S	5W	MADISON
13	7.00	NWSENW	32	1S	5W	MADISON
14	8.00	SWSENW	32	1S	5W	MADISON
15	4.00	SESENW	32	1S	5W	MADISON
16	8.00	NWNESW	32	1S	5W	MADISON
17	10.00	NENESW	32	1S	5W	MADISON
18	8.00	SWNESW	32	1S	5W	MADISON
19	2.50	SENESW	32	1S	5W	MADISON
20	2.00	NWSESW	32	1S	5W	MADISON
21	2.00	NWNWSE	32	1S	5W	MADISON
22	5.00	SWSWSE	30	1S	5W	MADISON
23	9.00	SESWSE	30	1S	5W	MADISON
24	1.00	NENENW	31	1S	5W	MADISON
25	5.00	SENENW	31	1S	5W	MADISON
26	9.50	NWNWNE	31	1S	5W	MADISON
27	1.00	NENWNE	31	1S	5W	MADISON
28	5.00	SWNWNE	31	1S	5W	MADISON
Total:	<u>153.00</u>					

Remarks:

AUTHORIZATION TO CHANGE (SEVER/SELL) POINT OF DIVERSION COMPLETED 10/20/1982 . FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE.

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

Water Right Number: **41G 195653-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: NELSON SPRING CREEK RANCH
PO BOX 715
SILVER STAR, MT 59751

Priority Date: JUNE 19, 1938

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 3.50 CFS

140.00 MINERS INCHES (3.50 CFS) FLOW RATE FOR THIS RIGHT IS MEASURED FROM THE SECONDARY POINTS OF DIVERSION LOCATED ON THE CREEKLYN DITCH IN SECTIONS 30 AND 31, TWP 01S, RGE 05W, MADISON COUNTY.

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:** 90.00

***Source Name:** JEFFERSON RIVER

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		NWSWNW	26	2S	6W	MADISON

Period of Diversion: APRIL 15 TO NOVEMBER 1

Diversion Means: HEADGATE

SECONDARY POINTS OF DIVERSION OFF CREEKLYN DITCH LOCATED IN NENWNE SEC 31 TWP 01S RGE 05W MADISON CNTY AND SWSESE SEC 30 TWP 01S RGE 05W MADISON CNTY.

Period of Use: APRIL 15 TO NOVEMBER 1

***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	1.50		SESESE	30	1S	5W	MADISON
2	3.00		SWSESE	30	1S	5W	MADISON
3	2.00		SESWSE	30	1S	5W	MADISON
4	5.00		NENENE	31	1S	5W	MADISON
5	3.00		NENENE	31	1S	5W	MADISON
6	9.50		NWNENE	31	1S	5W	MADISON
7	7.00		SENENE	31	1S	5W	MADISON

8	10.00	SWNENE	31	1S	5W	MADISON
9	6.00	NENWNE	31	1S	5W	MADISON
10	10.00	SENWNE	31	1S	5W	MADISON
11	3.00	SWNWNE	31	1S	5W	MADISON
12	2.00	NESENE	31	1S	5W	MADISON
13	8.00	NWSENE	31	1S	5W	MADISON
14	4.00	SWSENE	31	1S	5W	MADISON
15	8.00	NWNESE	31	1S	5W	MADISON
16	4.00	NWNWNW	32	1S	5W	MADISON
17	4.00	SWNWNW	32	1S	5W	MADISON
Total:	<u>90.00</u>					

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.

195652-00

195653-00