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41G-0186-R-2021

September 9, 2021

Montana Water Court

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

* * * * *

CLAIMANT: Lombardi Ranches Inc.

CASE 41G-0186-R-2021
41G 196852-00

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 196852-00 appeared in the Preliminary Decree for the Jefferson River Basin (Basin 41G) dated February 15, 2018. The claim received an issue remark providing notice of information in the claim file regarding the source name. The claim was consolidated into Case 41G-186-R-2021 to resolve the issue remark.

FINDINGS OF FACT

1. Water right claim 41G 196852-00 is a stockwater right to water from Little Cherry Creek Spring. It appeared in the Preliminary Decree with the following issue remark:

THE CLAIMANT FILED AN AFFIDAVIT ON SEPTEMBER 11, 1992
STATING THAT THE CORRECT SOURCE OF THIS CLAIM IS LITTLE
CHERRY CREEK SPRING CREEK.

2. This remark references an affidavit that the Claimant filed in conjunction with Water Court proceedings following the Basin 41G Temporary Preliminary Decree. Claimant Lombardi Ranch Inc.'s September 11, 1992 affidavit reads, in pertinent part, "stock water all along creek." A map attached to that affidavit includes a handwritten label describing the creek as "Little Cherry Creek Spring Cr." The resulting October 13, 1992 Master's Report found that "according to the Affidavit and map, the correct source where the livestock drink the water is not the spring itself, but is a reach of Little Cherry Creek Spring Creek flowing through the claimant's property." The 1992 Master's Report did not implement a source name change because no notice had been given in the Temporary Preliminary Decree of a potential source name modification.

3. The DNRC standardized source names as part of its reexamination in preparation of the Preliminary Decree. Because the source name of this right was not modified by the 1992 Master's Report, the DNRC did not apply its standardization procedures to the proposed source name, "Little Cherry Creek Spring Creek." No other claim in this basin appeared in the Preliminary Decree with this proposed source name, and there is no information in the claim file suggesting that this source name was used by the USGS or Water Resources Survey.

4. The addition of the following information remark would reflect the source indicated in the 1992 Master's Report without confusing the source by adding names that have not been standardized or widely used:

LIVESTOCK DRINK FROM A CREEK FLOWING FROM LITTLE CHERRY CREEK SPRING. THIS CREEK IS SOMETIMES REFERRED TO AS "LITTLE CHERRY CREEK SPRING CREEK"

5. The Court ordered the Claimant to appear at an April 14, 2021 status conference, but the Claimant failed to appear. The Court then issued a filing deadline and then an Order to Show Cause, requiring the Claimant to contact the Court by July 19, 2021, if it disagreed with adding the above-described information remark to the claim. The Claimant failed to contact the Court by either deadline.

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. A properly filed Statement of Claim for an existing water right is *prima facie* proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R. *Prima facie* proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

3. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing, or fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R. Sanctions applied against claimants may include modification of the claim to conform with information obtained by the court or included in an objection. Rule 22, W.R.Adj.R.

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." *In re Clark Fork Coal.*, Case 76G-A8, 2014 Mont. Water LEXIS 15, *10 (Oct. 29, 2014).

CONCLUSIONS OF LAW

1. The Claimant has failed to participate meaningfully in this case, despite being given opportunity to do so. *See, Order Consolidating Case and Setting Status Conference*, March 9, 2021, *Order to Show Cause* June 16, 2021. Accordingly, the claims should be modified in accordance with evidence before the Court.

2. The information remark described in Finding of Fact No. 4 above, assists in defining the nature of the right and in administration in accord with historical use. It should be added to the claim. Adding the remark resolves the issue remark providing notice of the Claimant's affidavit describing stock use along the creek.

RECOMMENDATIONS

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

A post decree abstract of the water right claim is attached to this Report for review.

Eyvind Ostrem
Water Master

Service via USPS Mail
Lombardi Ranches Inc
55 Hanson Ln
Whitehall, MT 59759-5000

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

Water Right Number: **41G 196852-00** STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: LOMBARDI RANCHES INC
55 HANSON LN
WHITEHALL, MT 59759 5000

Priority Date: JUNE 12, 1912

Type of Historical Right: FILED

***Purpose (Use):** STOCK

***Flow Rate:**

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

***Source Name:** LITTLE CHERRY CREEK SPRING
Source Type: GROUNDWATER
LIVESTOCK DRINK FROM A CREEK FLOWING FROM LITTLE CHERRY CREEK SPRING. THIS CREEK IS SOMETIMES REFERRED TO AS "LITTLE CHERRY CREEK SPRING CREEK".

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SW	20	1S	6W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
2		NE	29	1S	6W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SW	20	1S	6W	MADISON
2			NE	29	1S	6W	MADISON