

Montana Water Court
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41G-0371-R-2021

September 14, 2021

Montana Water Court

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

* * * * *

CLAIMANT: Jack Cooper Ranch Inc.

CASE 41G-0371-R-2021

41G 199072-00

OBJECTORS: Katie S. Cooper; Mark W. Cooper;
Gary Lower; Ann Lower**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

FINDINGS OF FACT

1. Case 41G-0371-R-2021 was consolidated to address the objection and issue remarks received by claim 41G 199072-00.
2. Claim 41G 199072-00 received the following DNRC issue remarks:

POINT OF DIVERSION AND DITCH NAME WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

A LATE OBJECTION HAS BEEN FILED TO THE ALL ELEMENTS OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

The point of diversion and ditch name issue remark indicates that if no objections are filed, the elements of the claim will remain as they appear on the abstract and the remark will be removed. No parties filed objections to the point of diversion or ditch name for the claim. The remark should be removed.

3. The second issue remark notes a late objection filed against the claim by Gary and Ann Lower on October 6, 2008. A June 8, 2021 Order set a filing deadline for the Lowers to indicate whether they intended to pursue their objection. The order stated that if nothing was filed by the July 7, 2021 deadline, the Court would conclude that the Lowers no longer intend to pursue their objection. Nothing was filed by the deadline.

4. Claim 41G 199072-00 received an objection from the Claimant concerning the period of use and period of diversion on February 11, 2019. The objection states that the “Period of Diversion and Period of Use should be corrected to April 15 to October 25. Property is located within climatic area 3, which reflects this irrigation season. This period of diversion and use best fits historical irrigation practices. Irrigation type should be corrected to flood/ sprinkler.”

A deadline was set for the claimant to file evidence in support of its objection. The claimant responded to the order with a motion to amend and a declaration to support objections on July 29, 2021. The declaration of support is an affidavit from Mark Cooper

who was born in 1951 and worked on the Cooper Ranch his entire life. Mr. Cooper indicates that the ditch associated with this water right has been used as early as April 15 and as late as October 25.

The claimant's affidavit supports the claimant's request to correct the period of use and period of diversion. The modification will reflect the historical irrigation practice more accurately.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water 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. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

3. The requirement to resolve issue remarks does not eliminate the *prima facie* status granted to water rights, nor does it change the burden of proof required to modify or invalidate a claim. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

The point of diversion and ditch name issue remark for 41G 199072-00 indicated that if no objections were filed, those elements of the claims would remain as they appeared on the abstracts and the remark would be removed. No parties filed objections to the point of diversion or ditch name for the claim.

The Lowers filed a late objection to claim 41G 199072-00 in 2008. The Lowers were provided an opportunity to pursue those objections during these proceedings. No response from the Lowers was received by the filing deadline.

Neither of the issue remarks overcome the *prima facie* status of the claim. The remarks should be removed.

4. The claimant's objection to the period of use and period of diversion is supported by Mark Cooper's affidavit. The affidavit clarifies the historical use of claim 41G 199072-00 and supports the modification of the period of use and period of diversion to reflect the historical use of the claim more accurately. The evidence overcomes the *prima facie* status of the claim, and the period of use and period of diversion should be corrected to April 15 – October 25.

5. The claimant objected to the irrigation type for 41G 199072-00 requesting it be modified from flood irrigation to flood/sprinkler irrigation. Per 85-2-102(7)(a)(b), MCA, a change in water use related to the type of irrigation does not require a change application because it does not constitute a "change in appropriation right." The irrigation type for claim 41G 199072-00 should be modified to flood/sprinkler.

RECOMMENDATIONS

1. The period of use and period of diversion for claim 41G 199072-00 should be corrected to April 15 – October 25.
2. The irrigation type for claim 41G 199072-00 should be modified to flood/sprinkler.
3. The issue remarks should be removed from the claim.

A Post Decree Abstract of the Water Right Claim is served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

Madeleine Weisz
Senior Water Master

Service via USPS Mail:

Jack Cooper Ranch Inc.
c/o Jack Cooper
PO Box 126
Willow Creek, MT 59760

Gary Lower
Ann Lower
PO Box 196
Willow Creek, MT 59760
(Returned mail received)

Mark W. Cooper
Katie S. Cooper
PO Box 31
Willow Creek, MT 59760

Note: Service list updated 9-13-2021

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

Water Right Number: 41G 199072-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: COOPER, JACK RANCH INC
C/O JACK COOPER
PO BOX 126
WILLOW CREEK, MT 59760

Priority Date: DECEMBER 31, 1866

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 282.74 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: 169.00

Source Name: WILLOW CREEK

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		SWNWSE	30	1N	1E	GALLATIN

Period of Diversion: APRIL 15 TO OCTOBER 25

Diversion Means: HEADGATE

Ditch Name: GREEN HANKINSON DITCH

Period of Use: APRIL 15 TO OCTOBER 25

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	50.00		NE	24	1N	1W	GALLATIN
2	50.00		SE	24	1N	1W	GALLATIN
3	54.00		NW	19	1N	1E	GALLATIN
4	10.00		SW	19	1N	1E	GALLATIN
5	5.00		SESESE	13	1N	1W	GALLATIN
Total:	169.00						