

41G-0375-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: United States of America (USDA Forest Service)

CASE 41G-0375-R-2021  
41G 54425-00

OBJECTOR: United States of America (USDA Forest Service)

**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-0375-R-2021 was consolidated to address the issue remark and objection received by claim 41G 54425-00.
2. Claim 41G 54425-00 received the following DNRC issue remark:

POINT OF DIVERSION AND PLACE OF USE 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.

The remark indicates that if no objections are filed, the elements of the claim will remain as they appear on the abstracts and the remarks will be removed.

3. The Claimant filed an objection regarding the place of use and points of diversion on February 11, 2019, stating:

In an effort to correct a Forest Service filing error, the DNRC inadvertently excluded places of use that had historically been used under this claim. This objection seeks to correct this filing error.

The United States also references and incorporates the DNRC issue remarks, claim file and examination, and all other relevant DNRC materials, although it may not fully agree with them. The United States reserves the right to identify additional bases for its objections and to object to all other elements of this claim to ensure that additional issues that arise during field investigations, discovery, negotiations, or otherwise can be addressed by the Water Court during adjudication.

4. On June 28, 2021, the Water Court issued an Order Setting Filing Deadline, requiring that the Claimant prepare and submit an explanation of their sought corrections, including evidence and maps in support, by August 2, 2021.

5. The Claimant filed a response on August 2, 2021, stating that the point of diversion and place of use IDs 4 and 6 were inaccurate and should be modified as follows:

**\*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		N2N2SW	10	2N	6W	JEFFERSON
<b>Period of Diversion:</b> JUNE 1 TO OCTOBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
2		SWNW	10	2N	6W	JEFFERSON
<b>Period of Diversion:</b> JUNE 1 TO OCTOBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
3		NE	9	2N	6W	JEFFERSON
<b>Period of Diversion:</b> JUNE 1 TO OCTOBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
4		<u>W2</u>	4	2N	6W	JEFFERSON
<b>Period of Diversion:</b> JUNE 1 TO OCTOBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
5		<u>NESE</u> NE	5	2N	6W	JEFFERSON
<b>Period of Diversion:</b> JUNE 1 TO OCTOBER 31						
<b>Diversion Means:</b> LIVESTOCK DIRECT FROM SOURCE						
<b>Period of Use:</b>		JUNE 1 TO OCTOBER 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		N2N2SW		10	2N	6W	JEFFERSON
2		SWNW		10	2N	6W	JEFFERSON
3		NE		9	2N	6W	JEFFERSON
4		<u>W2</u>		4	2N	6W	JEFFERSON
5		<u>NESE</u> NE		5	2N	6W	JEFFERSON

6. The location of the source for the livestock claim, Beefstraight Creek, aligns with the claimant's requested changes. The creek travels through all four quarter sections of Section 4 and through the NE portion of Section 5. The objection seeks to modify the legal land description of the places of use and points of diversion for claim 41G 54425-00 to be more accurate.

**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.

The evidence supports modifying the places of use and points of diversion pursuant to the objection. The requested places of use and points of diversion align with the source of the claim, Beefstraight Creek, and describe the historical use of the claim more accurately.

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. 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 issue remark appearing on claim 41G 54425-00 does not overcome the *prima facie* status of the claim and should be removed.

#### RECOMMENDATIONS

1. The places of use and points of diversion for claim 41G 54425-00 should be modified as discussed above.
2. The issue remark 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 Electronic Mail:**

Jennifer A. Najjar  
US Dept of Justice, ENRD-NRS  
PO Box 7611  
Washington, DC 20044-7611  
(202) 305-0476  
[Jennifer.Najjar@usdoj.gov](mailto:Jennifer.Najjar@usdoj.gov)  
[MontanaBasins.ENRD@USDOJ.GOV](mailto:MontanaBasins.ENRD@USDOJ.GOV)

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

**Water Right Number:** **41G 54425-00** STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804 7203

**Priority Date:** APRIL 12, 1906

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**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:** BEEFSTRAIGHT 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		N2N2SW	10	2N	6W	JEFFERSON
<b>Period of Diversion:</b>	JUNE 1 TO OCTOBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
2		SWNW	10	2N	6W	JEFFERSON
<b>Period of Diversion:</b>	JUNE 1 TO OCTOBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
3		NE	9	2N	6W	JEFFERSON
<b>Period of Diversion:</b>	JUNE 1 TO OCTOBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
4		4	2N	6W	JEFFERSON	
<b>Period of Diversion:</b>	JUNE 1 TO OCTOBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
5		NE	5	2N	6W	JEFFERSON
<b>Period of Diversion:</b>	JUNE 1 TO OCTOBER 31					
<b>Diversion Means:</b>	LIVESTOCK DIRECT FROM SOURCE					
<b>Period of Use:</b>	JUNE 1 TO OCTOBER 31					

**Place of Use:**

<b><u>ID</u></b>	<b><u>Acres</u></b>	<b><u>Govt Lot</u></b>	<b><u>Qtr Sec</u></b>	<b><u>Sec</u></b>	<b><u>Twp</u></b>	<b><u>Rge</u></b>	<b><u>County</u></b>
1			N2N2SW	10	2N	6W	JEFFERSON
2			SWNW	10	2N	6W	JEFFERSON
3			NE	9	2N	6W	JEFFERSON
4				4	2N	6W	JEFFERSON
5			NE	5	2N	6W	JEFFERSON