

41G-0500-R-2022

July 29, 2022

Montana Water Court

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

* * * * *

CLAIMANTS: Karen M. Cruz; Peter J. Molenda;
Theresa A. Wilkinson

OBJECTOR: United States of America (Bureau of
Reclamation)

CASE 41G-0500-R-2022
41G 95720-00
41G 95722-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the 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 95720-00 and 41G 95722-00 appeared in the Preliminary Decree for the Jefferson River ("Basin 41G"). The claims did not receive substantive issue remarks. The United States of America Bureau of Reclamation ("United States") filed objections to both claims. To resolve the objections, the Water Court consolidated the claims into case 41G-0500-R-2022.

FINDINGS OF FACT

1. On February 8, 2019, the United States filed Objections to claims 41G 95729-00 and 41G 95722-00 on the basis that the claims did not represent actual historic beneficial water use and had been abandoned.
2. On April 26, 2022, a status conference was held between Karen M. Cruz, Peter J. Molenda, Theresa A. Wilkinson ("Claimants"), and Objector United States. The parties agreed to a 60-day settlement, and the Water Court set a filing deadline for the parties to file settlement documents or status reports by June 29, 2022.
3. On June 27, 2022, Claimants filed a Request to Withdraw Statement of Claim for claims 41G 95720-00 and 41G 95722-00, stating that they agreed with the United States objection that the claims had been abandoned due to lack of historical use.
4. On July 12, 2022, the United States filed a Status Report indicating that withdrawal of the claims resolves its objections.
5. Claims 41G 95720-00 and 41G 95722-00 should be dismissed from the adjudication based on the claimants' withdrawal requests.

CONCLUSIONS OF LAW

1. The Water Court has exclusive jurisdiction to determine the extent of all water rights in Montana as they existed prior to July 1, 1973. *In re Deadman's Basin Water Users Ass'n*, 2002 MT 15, ¶ 15, Section 3-7-501, MCA.
2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be 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. 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.

3. The claimant of a water right may waive the advantage of § 85-2-227, MCA. Rule 17(c), W.R.Adj.R. If a claimant agrees to reduce or limit an element of a claim, the Water Court does not need to determine whether the burden of proof has been met and may accept the claimant’s requested reduction or limitation without further presentation of evidence, unless there is an unresolved issue remark on the claim. *Id.*
4. Claimants agree to withdraw claims 41G 95720-00 and 41G 95722-00. The Water Court can accept the withdrawals without further presentation of evidence.

RECOMMENDATIONS

1. Claims 41G 95720-00 and 41G 95722-00 should be dismissed from the adjudication.

Post-decree abstracts of the claims are served with this Report to confirm that the claims are shown as dismissed in the State’s centralized water right record system.

Madeleine Weisz
Senior Water Master

Service via USPS Mail:

Karen M. Cruz
777 Feather Lane
Billings, MT 59102
(406) 670-5005
Kren_cruz@yahoo.com

Peter J. Molenda
644 Pine Circle
Gardner, KS 66030
(913) 300-1105
pmolenda@kc.rr.com

Theresa A. Wilkinson
PO Box 191
Whitehall, MT 59759-0191
(406) 498-2975

Service via Electronic Mail:

Last Order:

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

Mark Widerschein, Trial Attorney
US Dept of Justice, ENRD-NRS
PO Box 7611
Washington, DC 20044-7611
(202) 532-5803
Mark.widerschein@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV

Note: Service List Updated 7-21-2022

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G

Water Right Number: **41G 95720-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: THERESA A WILKINSON
 PO BOX 191
 WHITEHALL, MT 59759 0191

PETER J MOLEND
644 PINE CIRCLE
GARDNER, KS 66030

KAREN M CRUZ
777 FEATHER LN
BILLINGS, MT 59102

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (use): POWER GENERATION

Flow Rate:

Volume:

Source Name: JEFFERSON RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

WATER COURT
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G

Water Right Number: **41G 95722-00** STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: THERESA A WILKINSON
 PO BOX 191
 WHITEHALL, MT 59759 0191

PETER J MOLEND
644 PINE CIRCLE
GARDNER, KS 66030

KAREN M CRUZ
777 FEATHER LN
BILLINGS, MT 59102

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (use): IRRIGATION

Flow Rate:

Volume:

Source Name: JEFFERSON RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

REQUEST TO WITHDRAW STATEMENT OF CLAIM OR INTEREST IN STATEMENT OF CLAIM

Karen M. Cruz
Theresa A. Wilkinson

I/We, Peter J. Molenda hereby request the withdrawal or withdrawal of interest of

Statement of Claim Number CASE 41G-0500-R-2022

Water right1: 41G-95720-00

Water right2: 41G-95722-00

The reason for this request is:

ELECTRONICALLY FILED

 I/We have an existing right which is exempt from filing.

41G-0500-R-2022

 This claim was for a use of water after July 1, 1973.

June 27, 2022

 I/We have no existing water right to claim.

 I/We have no interest in said Statement of Claim

Montana Water Court

 X Other/Comments:

In response to US Bureau of Reclamation objection, we agree that water rights:

41G-95720-00 and 41G-95722-00 have been abandoned due to lack of historical

usage.

Statement Signed by Owner:

I declare under penalty of perjury (§ 45-7-201, MCA) under the laws of the state of Montana that the foregoing content of this form is true and correct. I further declare that I have the authority to sign this document for myself as an individual or in representational capacity as an officer of a corporation, member of a limited liability company, general partner of a limited partnership, trustee for a trust or other official capacity for an entity as defined under "person" in §85-2-102, MCA. (All current owners of the right as listed in the DNRC centralized record system are required to sign. Please attach DNRC's Withdrawal Agreement form if additional owner signatures are needed.)

6-27-2022
(Date Signed)

PJ Molenda
(Signature of Claimant)

(Office or Title)

June 25, 2022
(Date Signed)

Karen M. Cruz
(Signature of Claimant)

(Office or Title)

6-24-22
(Date Signed)

Theresa A. Wilkinson
(Signature of Claimant)

(Office or Title)

(Date Signed)

(Signature of Claimant)

(Office or Title)