

41G-0514-R-2022

July 21, 2022

Montana Water Court

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

* * * * *

CLAIMANT: Simon Ranch LP

CASE 41G-0514-R-2022

41G 95766-00

41G 95767-00

OBJECTOR: Otto E. Simon

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

Claims 41G 95766-00 and 41G 95767-00 are irrigation water rights owned by Simon Ranch LP. The claims appeared in the Preliminary Decree for the Jefferson River Basin (Basin 41G) with issue remarks resulting from pre-decree examination by the Montana Department of Natural Resources and Conservation (DNRC). To address the issue remarks, the Water Court consolidated the claims into case 41G-514-R-2022.

FINDINGS OF FACT

1. On October 24, 1991, Otto Simon filed an objection to the flow rate of claims 41G 95766-00 and 41G 95767-00 as being insufficient to irrigate the claimed place of use.
2. Claims 41G 95766-00 and 41G 95767-00 appeared in the 41G Preliminary Decree with the following issue remark:

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

3. On April 15, 2022, the Water Court issued an Order Setting Filing Deadline for Objector Otto Simon to indicate whether he would pursue the late objection. The Court stated that if nothing was filed by the deadline, the objection would be dismissed, and the issue remarks removed. Nothing was filed by the deadline.
4. Otto Simon has not pursued the objection and no other party has filed a motion for substitution.
5. The Simon objection should be dismissed. The late objection issue remarks are resolved and should be removed. The flow rate should remain as it currently appears on the claim abstracts.
6. Claim 41G 95767-00 also received an issue remark to provide notice of DNRC modifications to the point of diversion. This issue remark served its purpose of providing notice and should be removed.

CONCLUSIONS OF LAW

1. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248(2). The 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. Section 85-2-248(3), MCA. When resolving issue remarks, the Court must weigh the issue remark and the information resulting in the issue remark against the claimed water right. Section 85-2-247(2), 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 status may be overcome by other evidence that provides, 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. 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 Court, the Court may upon motion or its own initiative, issue such orders of sanction with regard thereto as are just. Sanctions applied against objectors and intervenors may include dismissal of the objector or intervenor from the proceeding. Rule 22, W.R.Adj.R.
4. Objector Otto Simon was provided an opportunity to pursue his 1991 objections to claims 41G 95766-00 and 41G 95767-00. Nothing was filed by the deadline. The objections should be dismissed.

RECOMMENDATIONS

1. The issue remarks should be removed from the claims.
2. No changes should be made to the elements of the claims.
3. The Simon Objections should be dismissed.

Post-decree abstracts of claims 41G 95766-00 and 41G 95767-00 are served with the Report to confirm that the recommended changes have been made in the state's centralized water right record system.

Madeleine Weisz
Senior Water Master

Service via USPS Mail:

Simon Ranch LP
228 McKeown Lane
Cardwell, MT 59721-9611

Otto E. Simon
228 McKeown Lane
Cardwell, MT 59721-9611

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

Water Right Number: 41G 95766-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SIMON RANCH LP
228 MCKEOWN LN
CARDWELL, MT 59721 9611

Priority Date: MARCH 23, 1920

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 5.31 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: 140.00

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		NENENE	12	1N	4W	JEFFERSON

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 1 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	80.00		S2NW	4	1N	3W	JEFFERSON
2	20.00		S2NENW	4	1N	3W	JEFFERSON
3	5.00		SENWNW	4	1N	3W	JEFFERSON
4	10.00		E2NWSW	4	1N	3W	JEFFERSON
5	25.00		S2S2SW	4	1N	3W	JEFFERSON
Total:	140.00						

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.

95766-00

95767-00

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

Water Right Number: 41G 95767-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SIMON RANCH LP
228 MCKEOWN LN
CARDWELL, MT 59721 9611

Priority Date: JULY 18, 1934

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 2.46 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: 65.00

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	28	1N	4W	JEFFERSON

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

2		NWNENW	5	1N	3W	JEFFERSON
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Period of Diversion: APRIL 1 TO NOVEMBER 4

Diversion Means: HEADGATE

Ditch Name: MCKEOWN DITCH

WATER DIVERTED FROM THE JEFFERSON RIVER IS CONVEYED TO THE JEFFERSON SLOUGH WHICH IS USED AS A NATURAL CARRIER TO SECONDARY POINT(S) OF DIVERSION, DIVERSION NO(S). 2.

Period of Use: APRIL 1 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	35.00		NWNW	4	1N	3W	JEFFERSON
2	5.00		NWSENE	4	1N	3W	JEFFERSON
3	15.00		W2NENW	4	1N	3W	JEFFERSON
4	10.00		N2SWNW	4	1N	3W	JEFFERSON

Total: 65.00

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.

95766-00

95767-00