

41G-0515-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-0515-R-2022

41G 133665-00

41G 133666-00

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

Claims 41G 133665-00 and 41G 133666-000 are irrigation rights owned by Simon Ranch LP. The claims appeared in the Preliminary Decree for the Jefferson River (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-0515-R-2022.

FINDINGS OF FACT

1. Claims 41G 133665-00 and 41G 133666-00 received the following issue remark:
THE CLAIMED MEANS OF DIVERSION CANNOT BE IDENTIFIED FROM AVAILABLE DATA.
2. On April 15, 2022, the Water Court issued an Order Setting Filing Deadline for Claimant Simon Ranch LP to file evidence clarifying the means of diversion for claims 41G 133665-00 and 41G 133666-00 by June 3, 2022. The Court stated that if nothing was filed, the issue remarks would be removed, and the means of diversion would remain as they appear in the 41G Preliminary Decree.¹
3. The filing deadline in the Water Court Order passed and, as of the date of filing of this Master's Report, Claimant Simon Ranch LP has not filed evidence or a status report with the Water Court.
4. The means of diversion of claims 41G 133665-00 and 41G 133666-00 should remain as the elements appear in the 41G Preliminary Decree.
5. The means of diversion issue remarks on claims 41G 133665-00 and 41G 133666-00 should be removed.
6. Claim 41G 133665-00 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.

¹ The April 15, 2022 Order incorrectly stated that the claims also received objections and a notice of intent to appear. This is a clerical error, and no objections nor notices of intent to appear were filed to claims 41G 133665-00 and 41G 133666-00.

CONCLUSIONS OF LAW

1. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248(2), MCA. 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 Water 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 claimants may include termination of the claim; or modification of the claim to conform with data provided by the department, information obtained by the court, or information included in an objection. Rule 22, W.R.Adj.R.
4. Claimant Simon Ranch LP did not file evidence to resolve the means of diversion issue remarks as ordered by the Water Court. Therefore, it is proper to resolve and remove the issue remarks from claims 41G 133665-00 and 41G 133666-00 based on the evidence currently before the Court.
5. The remaining issue remark appearing on claim 41G 133665-00 is a notice remark that does not overcome the prima facie status of the claim. The issue remark should be removed.

RECOMMENDATIONS

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

Post-decree abstracts of claims 41G 95766-00 and 41G 95767-00 are served with the Report to confirm that the recommended modifications 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

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

Water Right Number: 41G 133665-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

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

Priority Date: FEBRUARY 27, 1886

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 13.08 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: 345.00

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: PUMP/HEADGATE W/DITCH OR PIPELINE/FLOOD AND DIKE

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

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE/FLOOD AND DIKE

Ditch Name: MCKEOWN DITCH

WATER DIVERTED FROM JEFFERSON RIVER IS CONVEYED TO 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	142.00		W2	3	1N	3W	JEFFERSON
2	203.00		N2	10	1N	3W	JEFFERSON

Total: 345.00

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.

133665-00

133666-00

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

Water Right Number: 41G 133666-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

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

Priority Date: OCTOBER 20, 1902

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 12.50 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: 345.00

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: PUMP

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	142.00		W2	3	1N	3W	JEFFERSON
2	203.00		N2	10	1N	3W	JEFFERSON
Total:	345.00						

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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.

133665-00 133666-00

THE JEFFERSON RIVER OLD CHANNEL IS USED AS A NATURAL CARRIER OF JEFFERSON RIVER WATER TO NWNWSW SEC 11 TWP 01N RGE 04W WHERE THE WATER IS DIVERTED INTO THE JEFFERSON SLOUGH WHICH ACTS AS A NATURAL CARRIER TO NWNENW SEC 05 TWP 01N RGE 03W WHERE THE WATER IS DIVERTED INTO THE MCKEOWN DITCH.