

Montana Water Court
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ELECTRONICALLY FILED

41G-0404-R-2020

November 29, 2022

Montana Water Court

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

CLAIMANTS: **Buckner Family Trust; ~~Steven L. Buckner~~**; Ronald J.
Van Dyke

41G-0404-R-2020
41G 49978-00
41G 95638-00

OBJECTOR: State of Montana (Department of Fish Wildlife & Parks)

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, conclusions 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 49978-00 and 41G 95638-00 appeared in the Preliminary Decree for the Jefferson River Basin (Basin 41G) issued February 15, 2018. Each of the claims

received objections from Johns Ranch, Inc., Lelland Johns, and the State of Montana Department of Fish, Wildlife, and Parks (DFWP). The claims also received issue remarks identifying potential legal or factual issues with the claims. The claims were consolidated into case 41G-R404 to address the objections. That case number was changed to 41G-0404-R-2020 in accordance with new case naming procedures.

FINDINGS OF FACT

Claim 41G 49978-00

1. Johns Ranch, Inc. and Lelland Johns objected to the flow rate, volume, period of diversion and use, place of use, maximum acres, point of diversion, means of diversion, and source of this claim. At the request of Lelland Johns and Johns Ranch, the Court dismissed the objections filed by Johns Ranch on October 2, 2020, and the objections filed by Lelland Johns on November 10, 2020.

2. DFWP objected to all elements of this claim. On October 19, 2022, DFWP withdrew its objection.

3. Claim 41G 49978-00 also received the following issue remark identifying an April 11, 2002 objection filed by then claimant Steven Buckner:

A LATE OBJECTION HAS BEEN FILED TO THE PLACE OF USE, MAXIMUM ACRES, PERIOD OF USE, POINT OF DIVERSION, AND MEANS OF DIVERSION OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

Mr. Buckner withdrew his late objection on January 8, 2021.

4. The claim also received the following issue remarks that serve only to provide notice to water users (Notice Only Remarks):

THE SOURCE NAME HAS BEEN CHANGED TO BE CONSISTENT WITH A NAME CHANGE APPROVED BY THE UNITED STATES BOARD ON GEOGRAPHIC NAMES ON MAY 12, 1994, AND MCCALL V. CRUMB, CASE NO. 1862, JEFFERSON COUNTY. SOURCE NAME OF THIS CLAIM HAS BEEN CHANGED FROM WHITETAIL CREEK TO LITTLE WHITETAIL CREEK. BECAUSE OF UNCERTAINTY IN SOURCE NAMES APPEARING IN THE TEMPORARY PRELIMINARY DECREE DURING THE OBJECTION PERIOD, ANY WATER USER WHOSE RIGHTS MAY HAVE BEEN ADVERSELY AFFECTED MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

POINT OF DIVERSION WAS 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.

Claim 41G 95638-00

5. Johns Ranch, Inc. and Lelland Johns objected to the flow rate, volume, place of use, maximum acres, point of diversion, means of diversion, source, and abandonment or non-perfection of this claim. At the request of Lelland Johns and Johns Ranch, the Court dismissed the objections filed by Johns Ranch on October 2, 2020, and the objections filed by Lelland Johns on November 1, 2020.

6. DFWP objected to all elements of this claim. On October 19, 2022, DFWP withdrew its objection.

7. The claim also received the following Notice Only Remarks:

THE SOURCE NAME HAS BEEN CHANGED TO BE CONSISTENT WITH A NAME CHANGE APPROVED BY THE UNITED STATES BOARD ON GEOGRAPHIC NAMES ON MAY 12, 1994, AND MCCALL V. CRUMB, CASE NO. 1862, JEFFERSON COUNTY. SOURCE NAME OF THIS CLAIM HAS BEEN CHANGED FROM WHITETAIL CREEK TO LITTLE WHITETAIL CREEK. BECAUSE OF UNCERTAINTY IN SOURCE NAMES APPEARING IN THE TEMPORARY PRELIMINARY DECREE DURING THE OBJECTION PERIOD, ANY WATER USER WHOSE RIGHTS MAY HAVE BEEN ADVERSELY AFFECTED MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

DITCH NAME WAS 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.

PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.3. 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. Section 85-2-248(3), MCA.

CONCLUSIONS OF LAW

1. The findings of fact above are supported by a preponderance of the evidence. The objections filed by Lelland Johns, Johns Ranch, Steven Buckner, and DFWP to the claims in this case have been withdrawn or dismissed.

2. The late objection issue remark on claim 41G 49978-00 is resolved and can be removed from the claim. The Notice Only Remarks do not raise legal or factual issues for the Water Court to resolve and can be removed from the claims.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court remove the issue remarks from the above-captioned claims.

A post-decree abstract of each water right claim reflecting the recommended changes is attached to this Report.

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Senior Water Master

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Notice: Caption and Service List Updated 11.25.22

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

Water Right Number: 41G 49978-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: BUCKNER FAMILY TRUST
STEVEN L & LINDA N BUCKNER TRUSTEES
53 RIDDER LN
WHITEHALL, MT 59759 9625

Priority Date: JUNE 21, 1905

Type of Historical Right: DECREED

Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 6.25 CFS
UNDIVIDED 80% INTEREST IN A SINGLE WATER RIGHT FOR 6.25 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: 257.00

Source Name: LITTLE WHITETAIL 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		NWSE	6	2N	4W	JEFFERSON

Period of Diversion: APRIL 15 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: HOUGHTON-MCALL DITCH NO. 4

Period of Use: APRIL 15 TO OCTOBER 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	160.00		SE	5	2N	4W	JEFFERSON
2	40.00		NESW	5	2N	4W	JEFFERSON
3	22.00		W2NW	9	2N	4W	JEFFERSON
4	30.00		NENE	8	2N	4W	JEFFERSON
5	5.00		NENWNE	8	2N	4W	JEFFERSON

Total: 257.00

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

Water Right Number: 41G 95638-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: RONALD J VAN DYKE
129 RIDDER LN
WHITEHALL, MT 59759 9625

Priority Date: JUNE 21, 1905

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 6.25 CFS
UNDIVIDED 20 % INTEREST IN A SINGLE WATER RIGHT FOR 6.25 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: 201.00

Source Name: LITTLE WHITETAIL 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		NWSE	6	2N	4W	JEFFERSON

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: HOUGHTON-MCCALL DITCH NO. 4

Period of Use: MAY 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	130.00		NE	5	2N	4W	JEFFERSON
2	71.00		W2SW	4	2N	4W	JEFFERSON
Total:	201.00						

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.

95635-00

95636-00

95637-00

95638-00