

Montana Water Court
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ELECTRONICALLY FILED

41G-0413-R-2020

November 25, 2022

Montana Water Court

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

* * * * *

CLAIMANT: Ronald J. Van Dyke

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

41G-0413-R-2020

41G 95635-00

41G 95636-00

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, 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

Water right claims 41G 95635-00 and 41G 95636-00 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-R413 to address the objections. That case number was changed to 41G-0413-R-2020 in accordance with new case naming procedures.

FINDINGS OF FACT

1. Johns Ranch, Inc. and Lelland Johns objected to claims 41G 95635-00 and 41G 95636-00 as they appeared in the Preliminary Decree. 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 claims 41G 95635-00 and 41G 95636-00 as they appeared in the Preliminary Decree. On October 19, 2022, DFWP withdrew its objection.

3. Claim 41G 95636-00 received the following issue remark questioning its point of diversion:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SWNWSW SEC 33 TWP 3N RGE 4W JEFFERSON COUNTY.

The DNRC did not provide the Water Court with the information it relied upon in placing this issue remark on the claim. The point of diversion was previously addressed by the Water Court in case 41G-75 (Master's Report issued August 15, 1994). This Court asked the parties to review any remaining issues and provide status reports by September 19, 2022. That deadline was extended to October 19, 2022. The parties did not inform the Court that any change to the point of diversion is necessary. The Court therefore concludes that no change to the point of diversion is necessary to accurately reflect historical use.

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

Claim 41G 95635-00

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 LITTLE WHITETAIL CREEK TO WHITETAIL DEER 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.

Claim 41G 95636-00

THE MOTION OF THE WATER COURT WAS AMENDED TO CONFORM TO THE EVIDENCE TO INCLUDE POINT OF DIVERSION. BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE TEMPORARY PRELIMINARY DECREE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSLEY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

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 LITTLE WHITETAIL CREEK TO WHITETAIL DEER 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.

PRINCIPLES OF LAW

1. A properly filed claim of an existing right or an amended claim of existing 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.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. 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.

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, and DFWP to the claims in this case have been withdrawn or dismissed.

2. The point of diversion issue remark on claim 41G 95636-00 fails to overcome the prima facie status of the claim 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.

Eyvind Ostrem
Senior Water Master

Service via Electronic Mail

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

Water Right Number: 41G 95635-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

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

Priority Date: SEPTEMBER 15, 1883

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 282.80 GPM

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:** 63.00

Source Name: WHITETAIL DEER 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		E2E2NE	5	2N	4W	JEFFERSON

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: PUMP

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	43.00		NW	4	2N	4W	JEFFERSON
2	20.00		SWSW	33	3N	4W	JEFFERSON
Total:	63.00						

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

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

Water Right Number: 41G 95636-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

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

Priority Date: APRIL 1, 1878
Type of Historical Right: DECREED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: 283.00 GPM
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:** 109.00
***Source Name:** WHITETAIL DEER 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		SWSW	35	3N	4W	JEFFERSON

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: PUMP

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	45.00		W2W2	4	2N	4W	JEFFERSON
2	24.00		E2NE	5	2N	4W	JEFFERSON
3	20.00		SWSW	33	3N	4W	JEFFERSON
4	20.00		SESE	32	3N	4W	JEFFERSON

Total: 109.00

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