

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

CLAIMANT: Pais Casa Ranch

CASE 41G-0478-R-2022
41G 143491-00

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

FINDINGS OF FACT

1. Claim 41G 143491-00 is an irrigation claim that involves an onstream reservoir. It appeared in the 41G Preliminary Decree with issue remarks.

2. The claimant, Pais Casa Ranch, was ordered to meet with the DNRC in an informal attempt to resolve the issue remarks appearing on the claim.

3. On August 25, 2022, Kara Huyser, water resource specialist with the DNRC, filed a memorandum with recommendations for issue remark resolution. The memo indicates that J.J. Conner contacted the DNRC on behalf of the claimant and provided clarification that, in addition to existing information in the claim file, resolves the issue remarks appearing on the claim.

4. Claim 41G 143491-00 received several issue remarks. The first states:
THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF
DIVERSION APPEARS TO BE A DAM.

The DNRC explains that the originally claimed means of diversion was a pump. The means of diversion was modified to “ditch” by the Water Court in 1994 during Temporary Preliminary Decree proceedings based on the map in the claim file. The DNRC states that despite claim 41G 143491-00 being a direct flow irrigation system, the primary diversion means is a dam and indicates that the claimant agrees. The means of diversion should be modified to “dam,” and the issue remark should be removed.

5. Claim 41G 143491-00 appeared in the 41G Preliminary Decree with a year-round period of diversion and a year-round period of use. It received the following issue remarks concerning the period of diversion and period of use:

THE CLAIMED PERIOD OF USE EXCEEDS THE USUAL GROWING SEASON FOR THIS
CLIMATIC AREA WHICH IS APRIL 15 TO OCTOBER 15.

THE PERIOD OF DIVERSION MAY REQUIRE MODIFICATION BASED ON
RESOLUTION OF THE PERIOD OF USE ISSUE.

The DNRC memorandum provides that the claimant agrees that a period of use from April 15 to October 15 reflects the agricultural growing season more accurately. The period of use should be modified accordingly, and the issue remark should be removed from the claim.

The DNRC indicates that the period of diversion does not require modification. The source is a perennial stream which maintains the reservoir level throughout the year. The period of diversion should remain January 1 – December 31, and the issue remark

should be removed from the claim.

6. The final issue remark appearing on claim 41G 143491-00 states:

RESERVOIR RECORD 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.

This issue remark is a notice-type issue remark. It provides notice of changes made to the claim since the issuance of the Basin 41G Temporary Preliminary Decree. Claim did not receive any objections concerning the reservoir record modifications. The remark has served its purpose of providing notice and should be removed from the claim.

CONCLUSIONS 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. 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.

3. The information provided by the claimant and the information in the claim file constitutes sufficient evidence to resolve the issue remarks appearing on claim 41G 143491-00.

RECOMMENDATIONS

1. Claim 41G 143491-00 should be modified as provided above.
2. The issue remarks should be removed from the claim.

Post Decree Abstract of Water Right Claim is served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

Madeleine Weisz
Senior Water Master

Service via USPS Mail:

Pais Casa Ranch
c/o Karyn Conner
PO Box 1143
Three Forks, MT 59752-1143

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

Water Right Number: 41G 143491-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: PAIS CASA RANCH
%KARYN CONNER
PO BOX 1143
THREE FORKS, MT 59752 1143

Priority Date: DECEMBER 31, 1945

Type of Historical Right: USE

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

***Flow Rate:** 3.79 CFS
PRIMARILY A DIRECT FLOW SYSTEM; FLOW RATE RETAINED.

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
PRIMARILY A DIRECT FLOW IRRIGATION SYSTEM; VOLUME NOT DECREED.

Climatic Area: 3 - MODERATE

Maximum Acres: 100.00

***Source Name:** UNNAMED TRIBUTARY OF MUD SPRING GULCH
Source Type: SURFACE WATER
ALSO KNOWN AS SHODDY CREEK

***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	3	2N	1W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSE	3	2N	1W	JEFFERSON

Diversion to Reservoir: DIVERSION # 1

Depth: 12.00 FEET

Surface Area: 4.10 ACRES

Capacity: 19.68 ACRE-FEET

Period of Use: APRIL 15 TO OCTOBER 15

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	70.00		N2S2	2	2N	1W	JEFFERSON

2	30.00	S2NE	2	2N	1W	JEFFERSON
Total:	100.00					

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

143484-00 143491-00