

41G-0483-R-2022

November 17, 2022

Montana Water Court

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

CLAIMANTS: Fish Creek Irrigating Ditch Co.;
Jefferson Canal Co.

CASE 41G-0483-R-2022
41G 118166-00

OBJECTORS: United States of America (Bureau of
Land Management); United States of
America (Bureau of Reclamation)

NOTICE OF INTENT TO APPEAR: Jefferson Canal Co.

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 118166-00 appeared in the 41G Preliminary Decree issued February 15, 2018. It is an irrigation claim from the Jefferson River, owned by Jefferson Canal Co. and Fish Creek Irrigating Ditch Co. Claim 41G 118166-00 received an objection from the United States Bureau of Land Management and the United States Bureau of Reclamation (collectively referred to as “the United States”).

2. On September 15, 2022, the parties filed a Stipulation to Resolve Objections. The Stipulation states that the maximum acreage claimed by claim 41G 118166-00 exceeds historical use of the right, and some of the legal land descriptions for the place of use require correction.

3. The parties agree that the maximum acres for claim 41G 118166-00 should be reduced from 2,574.90 acres to 2,504.90 acres. The place of use legal land descriptions should be corrected as follows:

<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	25.00	SE	E2	17	1N 4W	JEFFERSON
2	15.00			W2W2	16	1N 4W	JEFFERSON
3	20.00		SE	20	1N 4W	JEFFERSON	
4	259.50		SE	20	1N 4W	JEFFERSON	
5	35.00		SE	19	1N 4W	JEFFERSON	
6	106.40		NW	29	1N 4W	JEFFERSON	
7	13.00		N2N2NE	29	1N 4W	JEFFERSON	
8	80.00		SW	29	1N 4W	JEFFERSON	
9	12.00		SWSE	29	1N 4W	JEFFERSON	
10	10.00		NENE	30	1N 4W	JEFFERSON	
11	142.00		SE	30	1N 4W	JEFFERSON	
12	531.00			31	1N 4W	JEFFERSON	
13	318.00			1	1S 1N	5W	JEFFERSON
14	360.00			6	1S 1N	4W	JEFFERSON
15	75.00		W2	7	1S 1N	4W	JEFFERSON
16	285.00			12	1S 1N	5W	JEFFERSON
17	15.00		E2NENE	11	1S 1N	5W	JEFFERSON
18	80.00		E2	2	1S 1N	5W	JEFFERSON
19	130.00	79.00	NW	E2	32	1N 4W	JEFFERSON
20	2.00	48.00	W2SW	NENENW	32	1N 4W	JEFFERSON
21	6.00		S2SWSW	36	1N 5W	JEFFERSON	
Total:	2,574.90	2,504.90					

Add Pou: 5.00 acres
W2NESW, Sec 32
1N, 4W, Jefferson

In support, the parties attach a map to the Stipulation depicting the historical place of use.

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. The claimant of a water right claim may waive the advantage of § 85-2-227, MCA by requesting a reduction or limitation of an element of a water right claim. The water court may accept a claimant's requested reduction or limitation without further presentation of evidence unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R. The changes requested to the maximum acres for claim 41G 118166-00 constitute reductions to the claim and should be accepted by the Court.

3. The Water Court may correct a clerical mistake or a mistake arising from oversight or omission where one is found in a part of the record. Rule 60(a), M.R.Civ.P. The corrections requested to the place of use legal land descriptions are minor refinements that can be corrected as clerical mistakes or oversights.

RECOMMENDATIONS

1. Claim 41G 118166-00 should be modified as provided above.

A 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:

Fish Creek Irrigating Ditch Co.
c/o Virginia Miller
52 Capp Lane
Whitehall, MT 59759-9704
(406) 490-2388
Dean.7ranch@gmail.com

Jefferson Canal Company
c/o Virginia Miller
52 Capp Lane.
Whitehall, MT 59759

Service via Electronic Mail:

Jennifer A. Najjar
US Dept of Justice, ENRD-NRS
PO Box 7611
Washington, DC 20044-7611
(202) 305-0476
Jennifer.Najjar@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV

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

Water Right Number: 41G 118166-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JEFFERSON CANAL CO
% GINGER MILLER
52 CAPP LANE
WHITEHALL, MT 59759

FISH CREEK IRRIGATING DITCH CO
% VIRGINIA MILLER
52 CAPP LN
WHITEHALL, MT 59759 9704

Priority Date: APRIL 25, 1885

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 30.00 CFS

THE COMBINED FLOW RATE FOR CLAIMS NO. 41G 118163-00, 41G 118164-00, 41G 118165-00 AND 41G 118166-00 IS LIMITED TO THE HISTORIC CAPACITY OF THE DIVERSION STRUCTURE AND THE CONVEYANCE FACILITY.

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: 2,504.90

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		NWNWSW	14	1S	5W	JEFFERSON

Period of Diversion: APRIL 1 TO NOVEMBER 30

Diversion Means: HEADGATE

THE OLD CHANNEL OF FISH CREEK IS USED AS A NATURAL CARRIER FOR THE WATER OF FISH CREEK DITCH.

Period of Use: APRIL 1 TO NOVEMBER 30

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>
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18	79.00	NW	32	1N	4W	JEFFERSON
19	48.00	W2SW	32	1N	4W	JEFFERSON
20	6.00	S2SWSW	36	1N	5W	JEFFERSON
21	5.00	W2NESW	32	1N	4W	JEFFERSON
Total:						2504.90

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.

118163-00 118164-00 118165-00 118166-00

