

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

CLAIMANT: Sitz Angus Farms LP

CASE 41G-0511-R-2022

41G 196747-00

41G 196748-00

OBJECTORS: Sitz Angus Farms LP; ~~Donna Sitz~~

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. This case was consolidated to address claims 41G 196747-00 and 41G 196748-00, owned by Sitz Angus Farms LP (Sitz). The claims received objections from Sitz as well as DNRC issue remarks.

2. Claims 41G 196747-00 and 41G 196748-00 each received a late-objection issue remark indicating that objections were filed to the claims after the 41G Temporary Preliminary Decree objection period had closed. The remarks provided notice that objections were filed to the source and point of diversion of the claims and would be resolved during the adjudication of the 41G Preliminary Decree.

3. Claims 41G 196747-00 and 41G 196748-00 were initially consolidated in Case 41G-0513-R-2022, but the late-objection issue remarks were overlooked, and the late objector was not added to the service list for Case 41G-0513-R-2022. Sitz filed Motions to Amend claims 41G 196747-00 and 41G 196748-00 in Case 41G-0513-R-2022 on June 30, 2022 (attached). But, once it became clear that claims 41G 196747-00 and 41G 196748-00 had late-objection issue remarks that needed to be addressed, they were reconsolidated into this case to add the late objector to the service list.

4. On October 14, 2022, Sitz filed a Motion for Substitution of Objector, indicating that Sitz should be substituted for the late objector Donna J. Sitz Arthun. In support, Sitz explained that Donna is the mother of Robert L. Sitz of Sitz Angus Farms LP. Donna passed away in 2015, but she and her children were partners in Sitz Angus Farms LP at the time the late objection was filed to claims 41G 196747-00 and 41G 196748-00. Donna's interest in the Sitz Ranch businesses passed to her partners (children) upon her passing.

5. Sitz Angus Farms LP should be substituted for Donna J. Sitz as the late objector in this case. The late objections to claims 41G 196747-00 and 41G 196748-00 indicate that the water used under these claims is diverted out of South Willow Creek via the Transfer Ditch (Section 21, T2S, R2W), which moves water from South Willow Creek to North Willow Creek.

6. The late objections are consistent with the Motions to Amend that Sitz filed for claims 41G 196747-00 and 41G 196748-00 on June 30, 2022, in Case 41G-0513-R-2022.

7. In its Motion to Amend claim 41G 196747-00, Sitz explains that claim 41G 196747-00 has historically used water from both North Willow Creek and South Willow Creek. Sitz indicates that Adkins Ditch No. 1 in the NWSWSE of Section 2, T2S, R2W has historically been used as a point of diversion. This assertion is supported by the statement of claim, which claimed a point of diversion in the NWSWSE of Section 2, T2S, R2W and includes a map that identifies the Adkins Ditch as a point of diversion. It appears the Adkins Ditch No. 1 point of diversion was removed from the abstract in error during claim reexamination. Accordingly, Adkins Ditch No. 1 in the NWSWSE of Section 2, T2S, R2W should be added back onto the claim to reflect historical use.

8. In its Motion to Amend claim 41G 196748-00, Sitz explains that like claim 41G 196747-00, claim 41G 196748-00 has historically used water from both North Willow Creek and South Willow Creek. However, in the 41G Preliminary Decree claim 41G 196748-00 identified North Willow Creek as the only source. The late objection put the source of the claim at issue. South Willow Creek should be added as a source to claim 41G 196748-00. The Transfer Ditch point of diversion in the NWNE of Section 21, T2S, R2W, which moves water from South Willow Creek to North Willow Creek, should be added to the claim.

Additionally, Sitz requests that ditch name be added to the point of diversion in the NWSWSE of Section 2, T2S, R2W. The ditch name associated with this point of diversion is Adkins Ditch No. 1, which should be added to the abstract.

9. In addition to the modifications to points of diversion and source discussed above, Sitz also requests modifications to the period of use and period of diversion for claims 41G 196747-00 and 41G 196748-00.

The claims appeared in the 41G Preliminary Decree with a period of use and period of diversion of April 15 – September 15. In its Motions to Amend, filed June 30, 2022 in Case 41G-0513-R-2022, Sitz requests the period of use and period of diversion be amended to April 1 – November 1.

An affidavit of Robert L. Sitz is attached to the Motions to Amend and supports the period of use and period of diversion amendment. The affidavit provides that Sitz is 56 years old and was raised on his family's ranch. Sitz indicates that he has lived and worked on the ranch throughout his life, establishing that he has direct knowledge of the historic use of these rights. He states that depending on the year and conditions, water has historically been diverted from North Willow Creek and South Willow Creek for irrigation use from April 1 – November 1. The period of use and period of diversion for claims 41G 196747-00 and 41G 196748-00 should be amended accordingly.

10. The issue remarks appearing on claims 41G 196747-00 and 41G 196748-00 do not require any further proceedings before the water court.

Both claims received a late-objection issue remark providing notice that Donna Sitz filed an objection to source and point of diversion after the Temporary Preliminary Decree objection period had closed. Sitz is substituted as the late-objector and the objections have been resolved based on the Sitz Motions to Amend. The late objection issue remark should be removed from the claims.

Both claims received an issue remark indicating that point of diversion and ditch names were modified during DNRC reexamination review. This is considered a notice issue remark. The necessary notice has been provided. The ditch names and points of diversion for both claims have been amended as discussed above based on the evidence before the court. The issue remarks should be removed from the claim.

Claim 41G 196748-00 received an issue remark providing notice that the Source name was changed from Willow Creek to North Willow Creek. The necessary notice has been provided. The sources for Claim 41G 196748-00 should be identified as both North Willow Creek and South Willow Creek based on the evidence before the court. The issue remark should be removed from the claim.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water 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.

The claimants have provided sufficient evidence to overcome the prima facie status of claims 41G 196747-00 and 41G 196748-00. The modifications requested in Sitz's Motions to Amend are adequately supported by the evidence and should be accepted by the Court.

2. All issue remarks to claims that are not resolved through the filing of an objection must be resolved pursuant to § 85-2-248, MCA. § 85-2-248(2), MCA. However, the requirement to resolve issue remarks does not eliminate the prima facie status granted to water rights, nor does it change the burden of proof required to modify or invalidate a claim. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

The issue remarks appearing on claims 41G 196747-00 and 41G 196748-00 do not overcome the prima facie status of the claims. The purpose of the issue remarks was to provide notice to other water users of modifications made to the claims or potential modifications that may be made during these proceedings. The remarks have served their purpose of providing notice and may be removed from the claim abstracts.

RECOMMENDATIONS

1. The modifications requested by the claimant's motions to amend should be accepted by the Court.
2. The issue remarks should be removed from the claims in this case.

Post Decree Abstracts of Water Right Claims are 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:

Last Order:

Donna Sitz
PO Box 67
Harrison, MT 59735

Last Order:

Richard Josephson
Josephson, Lovell & Dringman
PO Box 1047
Big Timber, MT 59011

Service via Electronic Mail:

Patti L. Rowland
Bloomquist Law Firm, P.C.
PO Box 1418
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Colleen Coyle
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Bozeman, MT 59771
(406) 551-4868
colleen@coylelawmt.com

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

Water Right Number: 41G 196747-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: SITZ ANGUS FARMS LP
% ROBERT L SITZ
PO BOX 129
HARRISON, MT 59735 0129

Priority Date: DECEMBER 31, 1865

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.50 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: 531.00

Source Name: NORTH WILLOW CREEK

Source Type: SURFACE WATER

Source Name: SOUTH WILLOW 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 | | NWNE | 21 | 2S | 2W | MADISON |
| Source Name: | SOUTH WILLOW CREEK | | | | | |
| Period of Diversion: | APRIL 1 TO NOVEMBER 1 | | | | | |
| Diversion Means: | HEADGATE | | | | | |
| Ditch Name: | TRANSFER DITCH | | | | | |
| 2 | | NWSWSE | 2 | 2S | 2W | MADISON |
| Source Name: | NORTH WILLOW CREEK | | | | | |
| Period of Diversion: | APRIL 1 TO NOVEMBER 1 | | | | | |
| Diversion Means: | HEADGATE | | | | | |
| Ditch Name: | ADKINS DITCH NO. 1 | | | | | |
| 3 | | NESWNW | 11 | 2S | 2W | MADISON |
| Source Name: | NORTH WILLOW CREEK | | | | | |
| Period of Diversion: | APRIL 1 TO NOVEMBER 1 | | | | | |
| Diversion Means: | HEADGATE | | | | | |
| Ditch Name: | ALLEN BOWMAN DITCH | | | | | |

4 NENWSE 10 2S 2W MADISON

Source Name: NORTH WILLOW CREEK

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: DURHAM ADKINS DITCH

WATER FROM SOUTH WILLOW CREEK IS DIVERTED IN TO THE TRANSFER DITCH WHICH CONVEYS THE WATER TO NORTH WILLOW CREEK . THE WATER IS THEN DIVERTED INTO THE ADKINS DITCH NO. 1; ALLEN BOWMAN DITCH; AND DURHAM ADKINS DITCH TO THE PLACE OF USE.

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 | 40.00 | | NENW | 2 | 2S | 2W | MADISON |
| 2 | 33.00 | | NWNE | 2 | 2S | 2W | MADISON |
| 3 | 40.00 | | NENE | 2 | 2S | 2W | MADISON |
| 4 | 30.00 | | SENE | 2 | 2S | 2W | MADISON |
| 5 | 8.00 | | SWNE | 2 | 2S | 2W | MADISON |
| 6 | 30.00 | | W2NW | 1 | 2S | 2W | MADISON |
| 7 | 40.00 | | SENW | 1 | 2S | 2W | MADISON |
| 8 | 20.00 | | NENW | 1 | 2S | 2W | MADISON |
| 9 | 35.00 | | NWNE | 1 | 2S | 2W | MADISON |
| 10 | 25.00 | | SWNE | 1 | 2S | 2W | MADISON |
| 11 | 15.00 | | NENE | 1 | 2S | 2W | MADISON |
| 12 | 5.00 | | NESE | 36 | 1S | 2W | MADISON |
| 13 | 40.00 | | NWNW | 2 | 2S | 2W | MADISON |
| 14 | 40.00 | | NWSW | 2 | 2S | 2W | MADISON |
| 15 | 40.00 | | SWSW | 2 | 2S | 2W | MADISON |
| 16 | 40.00 | | SWSE | 36 | 1S | 2W | MADISON |
| 17 | 38.00 | | NWSE | 36 | 1S | 2W | MADISON |
| 18 | 12.00 | | SESE | 36 | 1S | 2W | MADISON |
| Total: | <u>531.00</u> | | | | | | |

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.

196746-00 196747-00 196748-00 196749-00 196750-00

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.

195611-00 196747-00

AUTHORIZATION TO CHANGE THE PLACE OF USE COMPLETED 10/26/1990. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE. SEE 41G 196746-00.

AUTHORIZATION TO CHANGE THE PLACE OF USE ISSUED 11/13/1998. NOTICE OF COMPLETION DUE 12/31/2000. SEE 41G 196746-01 .

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

Water Right Number: 41G 196748-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: SITZ ANGUS FARMS LP
% ROBERT L SITZ
PO BOX 129
HARRISON, MT 59735 0129

Priority Date: DECEMBER 31, 1867

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.50 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: 531.00

Source Name: NORTH WILLOW CREEK

Source Type: SURFACE WATER

Source Name: SOUTH WILLOW 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 | | NWSWSE | 2 | 2S | 2W | MADISON |
| Source Name: | NORTH WILLOW CREEK | | | | | |
| Period of Diversion: | APRIL 1 TO NOVEMBER 1 | | | | | |
| Diversion Means: | HEADGATE | | | | | |
| Ditch Name: | ADKINS DITCH NO. 1 | | | | | |
| 2 | | NESWNW | 11 | 2S | 2W | MADISON |
| Source Name: | NORTH WILLOW CREEK | | | | | |
| Period of Diversion: | APRIL 1 TO NOVEMBER 1 | | | | | |
| Diversion Means: | HEADGATE | | | | | |
| Ditch Name: | ALLEN BOWMAN DITCH | | | | | |
| 3 | | NENWSE | 10 | 2S | 2W | MADISON |
| Source Name: | NORTH WILLOW CREEK | | | | | |
| Period of Diversion: | APRIL 1 TO NOVEMBER 1 | | | | | |
| Diversion Means: | HEADGATE | | | | | |
| Ditch Name: | DURHAM ADKINS DITCH | | | | | |

4 NWNE 21 2S 2W MADISON

Source Name: SOUTH WILLOW CREEK

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: TRANSFER DITCH

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 | 40.00 | | NENW | 2 | 2S | 2W | MADISON |
| 2 | 33.00 | | NWNE | 2 | 2S | 2W | MADISON |
| 3 | 40.00 | | NENE | 2 | 2S | 2W | MADISON |
| 4 | 30.00 | | SENE | 2 | 2S | 2W | MADISON |
| 5 | 8.00 | | SWNE | 2 | 2S | 2W | MADISON |
| 6 | 30.00 | | W2NW | 1 | 2S | 2W | MADISON |
| 7 | 40.00 | | SENW | 1 | 2S | 2W | MADISON |
| 8 | 20.00 | | NENW | 1 | 2S | 2W | MADISON |
| 9 | 35.00 | | NWNE | 1 | 2S | 2W | MADISON |
| 10 | 25.00 | | SWNE | 1 | 2S | 2W | MADISON |
| 11 | 15.00 | | NENE | 1 | 2S | 2W | MADISON |
| 12 | 5.00 | | NESE | 36 | 1S | 2W | MADISON |
| 13 | 40.00 | | NWNW | 2 | 2S | 2W | MADISON |
| 14 | 40.00 | | NWSW | 2 | 2S | 2W | MADISON |
| 15 | 40.00 | | SWSW | 2 | 2S | 2W | MADISON |
| 16 | 40.00 | | SWSE | 36 | 1S | 2W | MADISON |
| 17 | 38.00 | | NWSE | 36 | 1S | 2W | MADISON |
| 18 | 12.00 | | SESE | 36 | 1S | 2W | MADISON |
| Total: | 531.00 | | | | | | |

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.

196746-00 196747-00 196748-00 196749-00 196750-00

AUTHORIZATION TO CHANGE THE PLACE OF USE COMPLETED 10/26/1990. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE. SEE 41G 196746-00.

AUTHORIZATION TO CHANGE THE PLACE OF USE ISSUED 11/13/1998. NOTICE OF COMPLETION DUE 12/31/2000. SEE 41G 196746-01 .

41G-0513-R-2022

June 30, 2022

Montana Water Court

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

CLAIMANT: Sitz Angus Farms LP

OBJECTOR: Sitz Angus Farms LP

Case 41G-0513-R-2022

- 41G 195591 00
- 41G 195595 00
- 41G 195596 00
- 41G 195597 00
- 41G 195598 00
- 41G 195611 00
- 41G 196746 00
- 41G 196747 00
- 41G 196748 00
- 41G 196750 00
- 41G 196892 00
- 41G 196893 00

VERIFIED MOTION TO AMEND WATER RIGHT CLAIMS

COMES NOW Sitz Angus Farms Limited Partnership (hereinafter referred to as "Claimant" or Sitz") by and through counsel of record and hereby submits this *Verified Motion to Amend Water Right Claims*.

South Willow Creek stock water claim 41G 195591 00

Water right claim 41G 195591 00 is stock water right owned by Sitz, the source of which is South Willow Creek. Sitz filed an objection to period of diversion and the period of use asserting historical year-round stock water use. The abstract for this claim appeared in the Preliminary Decree for the Jefferson Basin (41G) with the following remark:

POINT OF DIVERSION AND DITCH NAME WERE 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.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON SOUTH WILLOW CREEK WITH A PRIORITY DATE PREDATING CASE NO. 5591, GALLATIN COUNTY.

"All elements" appeared on the Objection List as DNRC Examination Report issues.

Sitz has reviewed water right claim 41G 195591 00 and explains in the Affidavit attached to this Motion to Amend that South Willow Creek has historically been used direct from source and diverted from South Willow Creek year-round for stock water when water is physically available and it is possible to do so.

As such, Sitz hereby requests an order from the Water Court amending water right claim 41G 195591 00 to reflect historical use as follows:

Period of Diversion: January 1 to December 31
Period of Use: January 1 to December 31

Priority date and point of diversion do not require change.

South Willow Creek irrigation claims 41G 195595 00, 41G 195596 00, 41G 195597 00 and 41G 195598 00

Water right claims 41G 195595 00, 41G 195596 00, 41G 195597 00 and 41G 195598 00 are irrigation water right claims owned by Sitz, the source of which is South Willow Creek. Sitz filed an objection to the claimed period of diversion and the period of use asserting the historical period of diversion and use is from April 1 to November 1 as explained in the Sitz Affidavit attached to this Motion to Amend. The abstract for this claim appeared in the Preliminary Decree for the Jefferson Basin (41G) with the following remarks:

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.

POINT OF DIVERSION FOR NORWEGIAN DITCH APPEARS TO BE NENENE, SEC 6, TWP 03S RGE 02W. THIS ISSUE REPRESENTS A SUSTAINED ELEMENT AND SO WAS NOT MODIFIED BY THE DNRC PER WATER COURT ORDER.

Sitz has reviewed the South Willow Creek water right claims 41G 195595 00, 41G 195596 00, 41G 195597 00 and 41G 195598 00 and explains in the Affidavit

attached to this Motion to Amend that South Willow Creek water has historically been diverted and used for irrigation from April 1 to November 1.

Sitz also reviewed the legal descriptions for the claims in the Jefferson Basin (41G) Preliminary Decree with a point of diversion for Norwegian Ditch. The Norwegian ditch point of diversion either appears as being in the SWNENE of Section 6, T3S, R2W, or the NENENE of Section 6, T3S, R2W. It appears DNRC did not standardize this point of diversion during examination. Sitz agrees that the legal description for the point of diversion for Norwegian Ditch is more accurately described as set forth in the remark and as being in the NENENE of Section 6. With that, only one water right claim, 41G 143429 00, will have the SWNENE of Section 6, T6S, R2W as the legal description for the point of diversion of Norwegian Ditch. Unfortunately, water right claim 41G 143429 00 was not objected to or included on the objection list even though the point of diversion from Norwegian Ditch is the same point of diversion as the rest of the water rights. 41G 143429 00 is not part of this case and is not owned by Sitz.

Sitz hereby requests an order from the Water Court amending the period of diversion, period of use, and point of diversion for water right claims 41G 195595 00, 41G 195596 00, 41G 195597 00 and 41G 195598 00 as follows:

| | |
|-----------------------------|---|
| Period of Diversion: | April 1 to November 1 |
| Period of Use: | April 1 to November 1 |
| Point of Diversion: | NENENE, Section 6, T3S, R2W, Madison County |

North Willow Creek stock water claim 41G 195611 00

Water right claim 41G 195611 is a stock water right owned by Sitz, the source appears as North Willow Creek. Sitz filed an objection to period of diversion and the period of use asserting historical year-round stock water use. The abstract for this claim appeared in the Preliminary Decree for the Jefferson Basin (41G) with the following remark:

POINT OF DIVERSION AND DITCH NAME WERE 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.

THE SOURCE NAME HAS BEEN CHANGED TO BE CONSISTENT WITH THE 1988 UNITED STATES GEOLOGICAL SURVEY QUADRANGLE FOR THIS AREA. SOURCE NAME OF THIS CLAIM HAS BEEN CHANGED FROM WILLOW CREEK TO NORTH

WILLOW CREEK. BECAUSE OF INCONSISTENT SOURCE NAMES APPEARING IN THE TEMPORARY PRELIMINARY DECREE DURING THE OBJECTION PERIOD, ANY WATER USER WHOSE RIGHTS HAVE BEEN ADVERSELY AFFECTED BY THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

Sitz has reviewed water right claim 41G 195611 00 and explains in the Affidavit attached to this Motion to Amend that this water right and several others convey South Willow Creek water through the "transfer ditch" to North Willow Creek. Both sources have been used year-round for stock water when water is physically available and it is possible to do so.

As such, Sitz hereby requests an order from the Water Court amending water right claim 41G 195611 00 to reflect the historical use as follows:

Source: North Willow Creek and South Willow Creek
Point of Diversion and Means of Diversion
NWNE Section 21 T2S R2W Madison County
Source Name: South Willow Creek
Period of Diversion: January 1 to December 31
Diversion Means: Headgate
Ditch Name: Transfer Ditch
Period of Use: January 1 to December 31

Add Remark: WATER FROM SOUTH WILLOW CREEK IS DIVERTED IN TO THE TRANSFER DITCH WHICH CONVEYS THE WATER TO NORTH WILLOW CREEK. THE WATER IS THEN DIVERTED INTO THE ALLEN BOWMAN AND DURHAM ADKINS DITCHES TO THE PLACE OF USE.

North Willow Creek irrigation claims 41G 196746 00 and 41G 196750 00

Water right claims 41G 196746 00 and 41G 196750 00 are irrigation water right claims owned by Sitz, the source of which is North Willow Creek. Sitz filed objections to the claimed period of diversion and the period of use asserting the historical period of diversion and use is from April 1 to November 1 as explained in the Sitz Affidavit attached to this Motion to Amend. The abstract for this claim appeared in the Preliminary Decree for the Jefferson Basin (41G) with the following remarks:

POINT OF DIVERSION AND DITCH NAME WERE 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.

THE SOURCE NAME HAS BEEN CHANGED TO BE CONSISTENT WITH THE 1988

UNITED STATES GEOLOGICAL SURVEY QUADRANGLE FOR THIS AREA. SOURCE NAME OF THIS CLAIM HAS BEEN CHANGED FROM WILLOW CREEK TO NORTH WILLOW CREEK. BECAUSE OF INCONSISTENT SOURCE NAMES APPEARING IN THE TEMPORARY PRELIMINARY DECREE DURING THE OBJECTION PERIOD, ANY WATER USER WHOSE RIGHTS HAVE BEEN ADVERSELY AFFECTED BY THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

Sitz has reviewed water right claims 41G 196746 00 and 41G 196750 00 and explains in the Affidavit attached to this Motion to Amend that North Willow Creek water has historically been diverted and used for irrigation from April 1 to November 1. Sitz hereby requests an order from the Water Court amending the period of diversion and period of use for water right claims 41G 196746 00 and 41G 196750 00 as follows:

Period of Diversion: April 1 to November 1
Period of Use: April 1 to November 1

North Willow Creek and South Willow Creek irrigation claim 41G 196747 00

Water right claims 41G 196747 00 is an irrigation water right claim owned by Sitz, the source of which is North Willow Creek and South Willow Creek. Sitz filed an objection to the claimed period of diversion and the period of use asserting the historical period of diversion and use is from April 1 to November 1 as explained in the Sitz Affidavit attached to this Motion to Amend. The abstract for this claim appeared in the Preliminary Decree for the Jefferson Basin (41G) with the following remarks:

A LATE OBJECTION HAS BEEN FILED TO THE SOURCE AND POINT OF DIVERSION OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

POINT OF DIVERSION AND DITCH NAME WERE 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.

Sitz has reviewed water right claim 41G 196747 00 and explains in the Affidavit attached to this Motion to Amend that North and South Willow Creek waters have historically been diverted and used for irrigation from April 1 to November 1. Like the other Mary Isdell decreed rights, Adkins Ditch No. 1 has historically been used as a

point of diversion for this water right¹. Sitz hereby requests an order from the Water Court adding the Adkins Ditch No. 1 as a point of diversion and amending the period of diversion and period of use for water right claim 41G 196747 00 as follows:

Point of Diversion and Means of Diversion

NWSWSE Section 2 T2S R2W Madison County
Source Name: North Willow Creek
Diversion Means: Headgate
Ditch Name: Adkins Ditch No. 1
Period of Diversion: April 1 to November 1
Period of Use: April 1 to November 1

North Willow Creek and South Willow Creek irrigation claim 41G 196748 00

Water right claim 41G 196748 00 is an irrigation water right claim owned by Sitz, the source of which is both North Willow Creek and South Willow Creek. Sitz filed an objection to the claimed period of diversion and the period of use asserting the historical period of diversion and use is from April 1 to November 1 as explained in the Sitz Affidavit attached to this Motion to Amend. The abstract for this claim appeared in the Preliminary Decree for the Jefferson Basin (41G) with the following remarks:

A LATE OBJECTION HAS BEEN FILED TO THE SOURCE AND POINT OF DIVERSION OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

POINT OF DIVERSION AND DITCH NAME WERE 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.

THE SOURCE NAME HAS BEEN CHANGED TO BE CONSISTENT WITH THE 1988 UNITED STATES GEOLOGICAL SURVEY QUADRANGLE FOR THIS AREA. SOURCE NAME OF THIS CLAIM HAS BEEN CHANGED FROM WILLOW CREEK TO NORTH WILLOW CREEK. BECAUSE OF INCONSISTENT SOURCE NAMES APPEARING IN THE TEMPORARY PRELIMINARY DECREE DURING THE OBJECTION PERIOD, ANY WATER USER WHOSE RIGHTS HAVE BEEN ADVERSELY AFFECTED BY THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

South Willow Creek water is conveyed through the “transfer ditch” to North Willow Creek. Both sources have been used when water is physically available and it is

¹ Water right claims 41G 196746 00, 41G 196748 00 and 41G 196750 00 also have the Adkins Ditch No. 1 as a point of diversion and the ditch name should be added to these water right abstracts.

possible to do so. As such, Sitz hereby requests an order from the Water Court amending water right claim 41G 196748 00 to reflect the historical use as follows:

Source: North Willow Creek and South Willow Creek
Point of Diversion and Means of Diversion
NWNE Section 21 T2S R2W Madison County
Source Name: South Willow Creek
Period of Diversion: April 1 to November 1
Diversion Means: Headgate
Ditch Name: Transfer Ditch
Period of Use: April 1 November 1

Add Remark: WATER FROM SOUTH WILLOW CREEK IS DIVERTED IN TO THE TRANSFER DITCH WHICH CONVEYS THE WATER TO NORTH WILLOW CREEK. THE WATER IS THEN DIVERTED INTO THE ADKINS DITCH NO. 1, ALLEN BOWMAN AND DURHAM ADKINS DITCHES TO THE PLACE OF USE.

Rattlesnake Creek stock water claim 41G 196892 00

Water right claim 41G 196892 00 is a stock water right owned by Sitz, the source of which is Rattlesnake Creek. Sitz filed an objection to period of diversion and the period of use asserting historical year-round stock water use.

Sitz has reviewed water right claim 41G 196892 00 and explains in the Affidavit attached to this Motion to Amend that Rattlesnake Creek has historically been used direct from source year-round for stock water when water is physically available and it is possible to do so.

As such, Sitz hereby requests an order from the Water Court amending water right claim 41G 196892 00 to reflect historical use as follows:

Period of Diversion: January 1 to December 31
Period of Use: January 1 to December 31

Canadian Creek stock water claim 41G 196893 00

Water right claim 41G 196893 00 is stock water right owned by Sitz, the source of which is Rattlesnake Creek. Sitz filed an objection to period of diversion and the period of use asserting historical year-round stock water use.

Sitz has reviewed water right claim 41G 196893 00 and explains in the Affidavit attached to this Motion to Amend that Canadian Creek has historically been used direct from source year-round for stock water when water is physically available and it is possible to do so.

As such, Sitz hereby requests an order from the Water Court amending water

right claim 41G 195893 00 to reflect historical use as follows:

Period of Diversion: January 1 to December 31

Period of Use: January 1 to December 31

Amendment of the water right claims, as set forth above, reflect historic use of the claimed water rights. Claimant asks that the issue remarks be removed from the claims based on the information provided herein.

Dated this 24th day of June, 2022.

BLOOMQUIST LAW FIRM, P.C.

Patti L. Rowland

Patti L. Rowland

Calli J. Michaels

Attorneys for Sitz Angus Farms Limited Partnership

VERIFICATION

I, Robert L. Sitz, being first duly sworn, depose and say that I am an owner of these claims, that I am of legal age, and that I have read and know the contents of the foregoing *Verified Motion*, and the facts, matters, and information contained therein are true, accurate, and complete to the best of my knowledge.

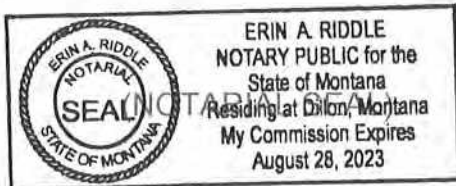
Robert L. Sitz

Robert L. Sitz

STATE OF MONTANA)

COUNTY OF Beaverhead)

Signed and sworn to before me this 24th day of June, 2022, by Robert L. Sitz.



Erin A. Riddle

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing *Verified Motion to Amend Water Right Claims* was served, as indicated, on this 30th day of June, 2022, upon the following:

Montana Water Court
1123 Research Drive (59718)
P.O. Box 1389
Bozeman, MT 59771-1389
watercourt@mt.gov
Via email

Erin A. Riddle

AFFIDAVIT OF ROBERT L. SITZ
Case 41G-0513-R-2022

I, Robert L. Sitz, being first duly sworn, depose and state:

1. I am 56 years old and reside in Madison County, Montana. My address is 37 Sitz Lane, Harrison, MT 59735. I was raised on our family ranch near the head of Norwegian Creek. I have lived and worked on the ranch throughout my life. In addition to my personal experience working on the ranch, I have researched and discussed the history of water use on our various properties with family and prior owners. Through my research, discussions, ownership, and occupancy of the land, I have become familiar with and gained personal knowledge of the ranch's historical and current water use.

2. The period of use claimed and the period of diversion appearing in the Preliminary Decree for the stock water claims in this case with a source of North Willow Creek and/or South Willow Creek is May 1 to October 1. The historical period of use and period of diversion has been January 1 – December 31 for both the direct from source use and diverted stock water use from these sources whenever it was available and physically possible to do so.

3. The period of use claimed and the period of diversion appearing in the Preliminary Decree for the stock water claims in this case with a source of Rattlesnake Creek and Canadian Creek is June 1 to December 1. The historical period of use and period of diversion has been January 1 to December 31 for both the direct from source use and diverted stock water use from these sources whenever it was available and physically possible to do so.

4. The period of use claimed and appearing in the Preliminary Decree for the irrigation claims whose source is North Willow Creek or South Willow Creek was either April 15 to September 15 or May 1 to October 1. Depending on the year and conditions, both North Willow Creek and South Willow Creek water has historically been diverted and used for irrigation from April 1 to November 1.

5. Several water right claims divert and convey South Willow Creek water through the Norwegian Ditch. The legal description for the Norwegian Ditch point of diversion is best described as being in the NENENE of Section 6, Township 3 South, Range 2 West, Madison County, although there are several claims that have slightly different legal descriptions.

6. Several water rights decreed to Mary Isdell in Case No. 5591, Madison County, that the ranch owns, divert South Willow Creek water via the Transfer Ditch located in the NWNE of Section 21, Township 2 South, Range 2 West, Madison County. The Transfer Ditch conveys the water to North Willow Creek which in turn conveys the water to various ditches, including the Allen Bowman Ditch and/or the Durham Adkins Ditch, and then to the place of use. Water right claims 41G 195611 00, 41G 196747 00, and 41G 196748 00 utilize both South Willow Creek and North Willow Creek water.

I declare under penalty of perjury and under the laws of the State of Montana that the foregoing is true and correct.

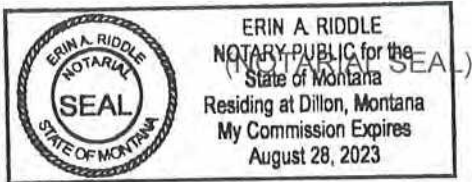
//

Dated this 24th day of June, 2022.

Robert L. Sitz
Robert L. Sitz

STATE OF MONTANA)
COUNTY OF Beaverhead

Signed and sworn to before me this 24th day of June, 2022, by Robert L. Sitz.



Erin A. Riddle