

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

* * * * *

CLAIMANT: Jefferson River Campground LLC

OBJECTOR: Nelson Spring Creek Ranch

CASE 41G-0535-R-2022
41G 33042-00

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 33042-00 is an irrigation claim from the Jefferson River owned by Jefferson River Campground LLC. During the 41G Preliminary Decree objection period, Nelson Spring Creek Ranch (Nelson) filed an objection to the point of diversion and ditch name for claim 41G 33042-00. The order consolidating case 41G-0535-R-2022 set a status conference for October 25, 2022, and ordered all parties to appear.

2. On October 4, 2022, Claimant Jefferson River Campground filed a motion to correct. The motion to correct states that the changes the DNRC made to the point of diversion and ditch name during the reexamination process were incorrect. The motion requests the point of diversion and ditch name be corrected. Nelson did not file a response to the motion to correct, indicating the motion is well taken.

3. A status conference was held in case 41G-0535-R-2022 on October 25, 2022. The Claimant Jefferson River Campground did not appear. Benjamin Sudduth appeared on behalf of Nelson. During the status conference, Nelson indicated that it agreed with the motion to correct filed by Jefferson River Campground and that acceptance of the motion would resolve its objection to claim 41G 33042-00.

4. The motion to correct claim 41G 33042-00 requests that the point of diversion be modified from the NWSWNW of Section 26, R2S, 6W (the Creeklyn Ditch point of diversion) to the NENWNW of Section 26, R2S, 6W (the Bonawitz Ditch point of diversion). In support, the Jefferson River Campground points to the September 24, 1981 statement of claim form for 41G 33042-00, which claimed the Bonawitz Ditch.

3. Name of ditch, creek or river BONAWITZ Ditch. 888

The point of diversion claimed on the statement of claim form was the NWNENW of Section 26, T2S, R6W. The DNRC changed the claimed point of diversion to the NWSWNW of Section 26, T2S, R6W during the reexamination process in 2016, and incorrectly added Creeklyn Ditch to the claim abstract. Both the claimant and the objector

agree that claim 41G 33042 is diverted via the Bonawitz Ditch, which is supported by the originally filed statement of claim.

The claimant's request that the point of diversion be decreed as the NENWNW of Section 26, T2S, R6W, is a slight modification from how the water right was originally claimed. In support, Jefferson River Campground provides a map showing the location of the diversion, which is similar to the map provided with the statement of claim form, but more precise. The requested correction is well supported by the evidence and should be accepted by the court.

5. When the DNRC modified claim 41G 33042-00 during reexamination, it added an issue remark stating the point of diversion was modified as a result of DNRC review. The purpose of the issue remark was to provide notice to water users that changes were made to the claim since the issuance of the Basin 41G Temporary Preliminary Decree. The necessary notice was provided, and the parties in this case presented sufficient evidence to establish that the modification made by DNRC was incorrect. The point of diversion should be corrected to the NENWNW of Section 26, T2S, R6W and 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 claimant provided sufficient evidence to overcome the prima facie status of the claim by a preponderance of the evidence. The evidence shows that the accurate point of diversion is located in the NENWNW of Section 26, T2S, R6W and the ditch associated with the claim is the Bonawitz Ditch.

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 remark appearing on claim 41G 33042-00 does not overcome the prima facie status of the claim. It should be removed from the claim abstract.

RECOMMENDATIONS

1. The claimant's motion to correct claim 41G 33042-00 should be accepted by the court.
2. The issue remark should be removed from claim 41G 33042-00.

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

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Note: Service List Updated 11-10-2022

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

Water Right Number: 41G 33042-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: JEFFERSON RIVER CAMPGROUND LLC
%REMITZ, RICK
347 S FERGUSON AVE SUITE 2
BOZEMAN, MT 59718

Priority Date: MAY 1, 1919

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.08 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: 55.00

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		NENWNW	26	2S	6W	MADISON

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: BONAWITZ DITCH

Period of Use: APRIL 1 TO OCTOBER 31

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	25.00		NWSW	13	2S	6W	MADISON
2	30.00		NESE	14	2S	6W	MADISON

Total: 55.00

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.

33042-00 33043-00

AUTHORIZATION TO CHANGE 41G 033042-00 REVOKED 11/10/1988. SEE 41G 070472-00.

41G-0535-R-2022

Madison County, MT



41G 33042 00

Exhibit C

Jefferson River Campground LLC
Property Border

PODs*

★ Bonawitz Ditch

☆ Creeklyn Ditch

Ditches*

— Natural Channel

— Bonawitz Ditch

— Creeklyn Ditch

POU*

Irrigated Acres

Created 10/3/2022

Aerial Imagery: 7/21/2019 NAIP



0 0.2 0.4
Miles

Geographic features displayed on the map have not been surveyed by DMS and should not be construed as surveyed. This map includes publicly available data obtained from third-party sources. DMS makes no warranties as to the accuracy of data obtained from third-party sources.

