

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

CLAIMANTS: Grant E. Houston; James D. Houston

CASE 41G-0547-R-2023
41G 29055-00

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, conclusion 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 29055-00 appeared in the Basin 41G Preliminary Decree. It is owned by Grant E Houston. During claim examination, claim 41G 29055-00 received the following issue remarks:

CONVEYANCE OF WATER FROM THE PARROT DITCH TO THE PLACE OF USE IS UNCLEAR IN THE CLAIM FILE AND FURTHER INFORMATION IS NEEDED FOR SECONDARY POINTS OF DIVERSION TO BE CLARIFIED.

POINT OF DIVERSION 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.

2. The Claimant was ordered to meet with the DNRC in an informal attempt to resolve the issue remarks. The DNRC was ordered to file a memorandum making recommendations for issue remark resolution. On April 6, 2023, the DNRC filed a memorandum that indicates Grant Houston provided evidence including aerial imagery that better depicts the conveyance system. The DNRC states that the clarification appears to be valid. The clarification provided by the Claimant resolves the conveyance issue remark.

3. The second issue remark is considered a notice issue remark and may be removed without the presentation of any additional evidence.

4. The claimant was provided an opportunity to indicate whether they agreed with DNRC's recommendations. The claimant filed a Concurrence on July 5, 2023, stating that they agree with DNRC's recommendations.

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. 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.

3. The evidence provided by the Claimant is sufficient to resolve the issue remarks appearing on claim 41G 29055-00.

RECOMMENDATIONS

1. Claim 41G 29055-00 should be modified as provided above.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the issue remarks have been removed from the abstract in the statewide database.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

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

Water Right Number: 41G 29055-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: GRANT E HOUSTON
PO BOX 517
LAKE CITY, CO 81235 0517

Priority Date: AUGUST 28, 1894

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 399.43 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: 23.39

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		NESENE	23	2S	6W	MADISON

Period of Diversion: MAY 15 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: PARROT DITCH

2 - SECONDARY		NWNWNE	7	2S	5W	MADISON
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Period of Diversion: MAY 15 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: MAY 15 TO OCTOBER 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	23.39		N2NW	7	2S	5W	MADISON

Total: 23.39