

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

CLAIMANTS: Kathryn L. Simpson 2006 Revocable
Trust; Michelle J. Walker

CASE 41G-0594-R-2023
41G 199026-00

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 199026-00 is an irrigation claim from South Willow Creek. It received a Department of Natural Resources (DNRC) issue remark concerning the place of use.

2. In the Preliminary Decree, the owners of claim 41G 199026-00 were identified as Kathryn L. Simpson 2006 Revocable Trust and Michelle J. Walker. To resolve the place of use issue remark on claim 41G 199026-00, the claimants were required to meet with the DNRC in an informal attempt to resolve the issue remark.

3. On March 7, 2023, the DNRC filed a memorandum with recommendations for issue remark resolution. The memo indicates that the claimants contacted the DNRC and discussed the issue remark.

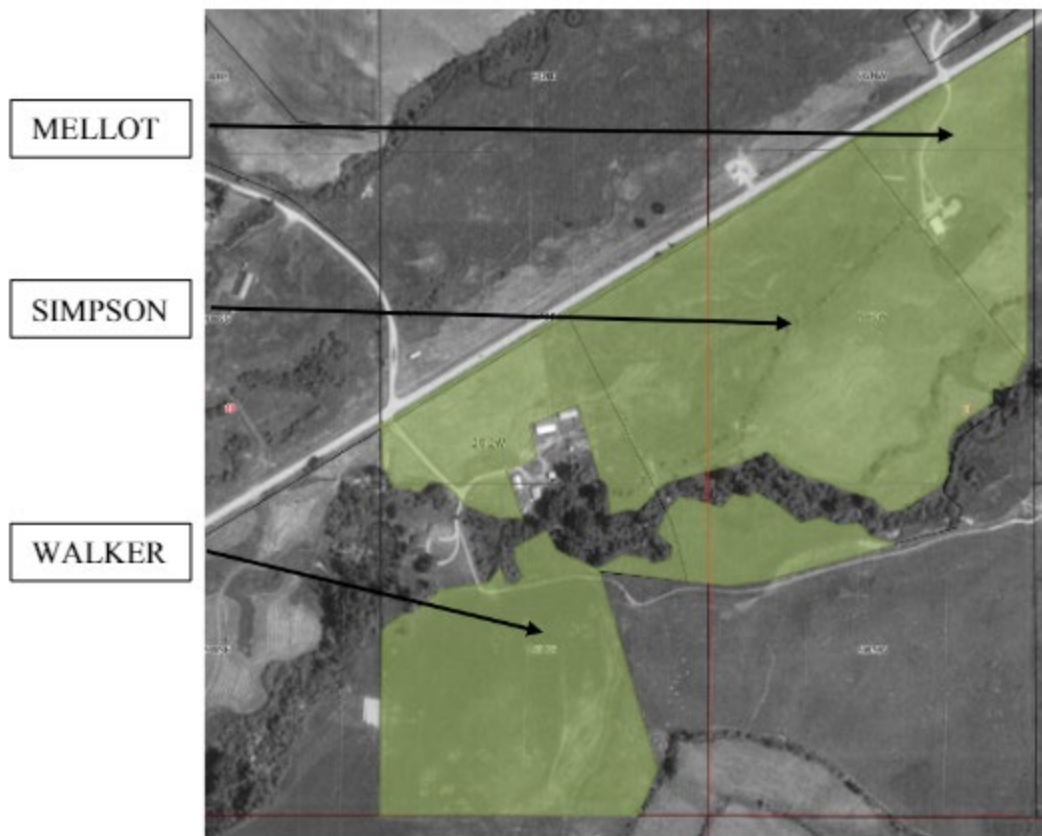
4. Claim 41G 199026-00 identifies a 100.00-acre place of use. It received an issue remark stating:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THAT 85.00 ACRES ARE ACTUALLY IRRIGATED AND PROBLEMS COULD EXIST WITH FLOW RATE AND VOLUME.

In its memo, the DNRC recommends the place of use be reduced from 100 acres to 95 acres with the following legal land description:

ID	Acres	Govt Lot	Qtr	Sec	Sec	Twp	Rge	County
1	19.00		NESE	10	2S	2W	MADISON	
2	28.50		SESE	10	2S	2W	MADISON	
3	37.50		NWSW	11	2S	2W	MADISON	
4	5.50		SWNW	11	2S	2W	MADISON	
5	4.50		SWSW	11	2S	2W	MADISON	
Total:		95.00						

The DNRC also indicates that a portion of the place of use appears to be owned by Marshall Mellot.



5. Marshall Mellot was provided notice of potential ownership in claim 41G 199026-00. An ownership update was processed on May 1, 2023 adding Mellot as an owner of claim 41G 199026-00.

6. A show cause order was issued for any of the claimants to comment on the DNRC's recommendation to reduce the place of use from 100 acres to 95 acres. The order stated that if nothing was filed by the deadline, the court would conclude that the DNRC's recommendations should be accepted. Nothing was filed by the deadline. Claim 41G 199026-00 should be reduced from 100 acres to 95 acres.

7. Claim 41G 199026-00 received two additional issue 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 SOUTH 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.

These remarks are considered “notice” issue remarks. Their purpose is to provide notice of changes made to the claim since the adjudication of the Temporary Preliminary Decree. The remarks do not raise issues that require further proceedings. The notice issue remarks 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 and recommendation provided by the DNRC is sufficient to resolve the place of use issue remark appearing on claim 41G 199026-00-00. The notice issue remarks do not overcome the prima facie status of the claim and should be considered resolved.

RECOMMENDATIONS

1. The issue remarks should be removed from claim 41G 199026-00.

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

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Kathryn L. Simpson 2006 Revocable Trust
PO Box 627
Pony, MT 59747-0627

Michelle J. Walker
PO Box 571
Pony, MT 59747-0571

Potential Owner:
Marshall H. Mellot
PO Box 211
Harrison, MT 59735

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

Water Right Number: 41G 199026-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

MARSHALL H MELLOTT

PO BOX 211

HARRISON, MT 59735 0211

SIMPSON, KATHRYN L 2006 REVOCABLE TRUST

PO BOX 627

243 PONY RD (HWY 283)

PONY, MT 59747 0627

J MICHELLE WALKER

PO BOX 571

PONY, MT 59747 0571

Priority Date: DECEMBER 31, 1915

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.00 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: 95.00

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		NESWSE	10	2S	2W	MADISON

Period of Diversion: APRIL 15 TO SEPTEMBER 10

Diversion Means: HEADGATE

Ditch Name: ANDERSON DITCH

2		SWSNW	15	2S	2W	MADISON
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Period of Diversion: APRIL 15 TO SEPTEMBER 10

Diversion Means: HEADGATE

Ditch Name: CARMIN BELL DITCH

Period of Use: APRIL 15 TO SEPTEMBER 10

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	19.00		NESE	10	2S	2W	MADISON
2	28.50		SESE	10	2S	2W	MADISON
3	37.50		NWSW	11	2S	2W	MADISON
4	5.50		SWNW	11	2S	2W	MADISON
5	4.50		SWSW	11	2S	2W	MADISON
Total:		95.00					

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.

199026-00

199027-00