

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

CLAIMANTS: Don L. Brown; Mildred Patterson

CASE 41G-0609-R-2023
41G 197124-00

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 197124-00 appeared in the Basin 41G Preliminary Decree with a DNRC issue remark concerning the means of diversion. No objections were filed to the claim.

2. Claim 41G 197124-00 is a 4.0 cfs water right from the Jefferson River for the purpose of mining. It received the following issue remark:

THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

3. The means of diversion for claim 41G 1997124-00 was decreed as “pump/headgate with ditch or pipeline,” which reflects the information on the Statement of Claim form:

DNRC
 5. Point of Diversion: County MADISON
SW 1/4 NE 1/4 SE 1/4, Section 1, T 2 N, R 6 W
 Lot _____, Block _____, Subdivision _____
 6. Means of Diversion: Well
 PH Pump Capacity _____ gpm
 Headgate with ditch or pipeline
 Instream use
 Other Explain _____
 7. Means of Conveyance: Ditch Instream
 Pipeline Other: _____

4. It is not clear why the DNRC noted that the means of diversion may be incorrect and no further information supporting the issue remark was provided. Water right claims are entitled to prima facie status. The evidence before the court does not overcome the prima facie status of the claim. The issue remark should be removed, and the means of diversion should remain unchanged.

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.

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 provides a sufficient basis to do so. § 85-2-248(3), MCA.

3. 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 factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. If it meets this standard, then the burden of proof shifts to the claimant to prove his or her claim's validity. An issue remark is weighed like any other evidence. When an issue remark is placed on a claim, "the information resulting in the issue remark and the issue remark *must be weighed against* the claimed water right." § 85-2-247(2), MCA (emphasis added). The Water Court shall review an issue remark "to determine if information in the claim file or information obtained by the court provides a sufficient basis to resolve the identified issue remark or to determine if the issue remark can be corrected as a clerical error." § 85-2-248(3), MCA. Determining whether the factual issues raised by an issue remark have been resolved requires the exercise of judicial discretion.

Id.

4. There is no evidence before the court to overcome the prima facie status of claim 41G 197124-00. The means of diversion issue remark should be removed.

RECOMMENDATIONS

1. The issue remark should be removed from claim 41G 197124-00.

A Post Decree Abstracts 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.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Don L. Brown
% Scott Brown
68 Cloverview Drive
Helena, MT 59601-0251

Mildred Patterson
% Don Brown
~~2801 Colonial Drive #321~~
~~Helena, MT 59601-8043~~
(Return mail received)

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

Water Right Number: 41G 197124-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: DON L BROWN
C/O SCOTT BROWN 68 CLOVERVIEW DR
HELENA, MT 59601-0251

MILDRED PATTERSON
% DON BROWN, 2801 COLONIAL DR #321
HELENA, MT 59601-8043

Priority Date: SEPTEMBER 1, 1869

Type of Historical Right: FILED

Purpose (Use): MINING

***Flow Rate:** 4.00 CFS

Volume: THIS WATER RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

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		SWNESE	1	2S	6W	MADISON

***Period of Diversion:** JUNE 1 TO OCTOBER 1

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

***Period of Use:** JUNE 1 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			W2SE	1	2S	6W	MADISON
2			NESE	1	2S	6W	MADISON

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.

197122-00 197123-00 197124-00