

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

CLAIMANTS: Elmore Ranch LLC

OBJECTOR: Elmore Ranch LLC

CASE 41G-0531-R-2022

41G 18891-00

41G 18892-00

41G 18893-00

41G 22559-00

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. This Case involves issue remarks and objections received by the following claims owned by Elmore Ranch LLC: 41G 18891-00, 41G 18892-00, 41G 18893-00, and 41G 22559-00. Elmore Ranch LLC filed objections to each of the claims. A filing deadline was set for the Ranch to provide evidence to support its objections.

2. The objections to the claims state that all four claims should be decreed with a period of use from April 1 to October 31. Claims 41G 18891-00 and 41G 18892-00 appeared in the Preliminary Decree with a period of use and period of diversion from May 15 to September 15; claim 41G 18893-00 identified a period of use and diversion from May 15 to October 15; and claim 41G 2259-00 identified a period of use and diversion from May 15 to October 1.

In addition, the objections indicate that the point of diversion and ditch names for claims 41G 18891-00, 41G 18893-00, and 41G 22559-00 should be modified to reflect the Buttleman Ditch point of diversion, which is located in the NENESE of Sec 7, 1S, 1E. Claim 41G 18892-00 already accurately reflects the Buttleman Ditch point of diversion.

3. On March 15, 2024, Mike Elmore filed a statement with the Court attesting, "I Mike Elmore, having lived here all my life, know that there was irrigation water in the Buttelman Ditch before July 1, 1973."

4. The objections, in addition with Elmore's March 15, 2024, filing establishing pre-July 1, 1973 knowledge of water use, are sufficient to overcome the prima facie status of the claims with regard to the period of use and period of diversion. The March 15, 2024 filing was not sufficient to overcome the point of diversion or ditch names for claims 41G 18891-00, 41G 18893-00, and 41G 2259-00.

5. On April 25, 2024, Mike Elmore and other representatives of Elmore Ranch met at the Court in Bozeman, Montana and supplemented the March 15, 2024 filing by adding a sentence establishing that all four water rights were diverted through the Buttleman Ditch point of diversion in Section 7 prior to July 1, 1973. The additional evidence is sufficient to overcome the prima facie status of the claims. The point of diversion and ditch name for claims 41G 18891-00, 41G 18893-00, and 41G 22559-00

should be modified to reflect the Buttleman Ditch point of diversion located in the NENESE of Sec 7, 1S, 1E.

6. Each of the claims in this case had an issue remark placed on them stating that the claims are interbasin transfer claims and that the objections filed to the claims during the 41G Objection Period would not be addressed until the claims are decreed in all Basins identified in the interbasin transfer claim. Court policy has changed since this remark was placed on the claims. On December 9, 2022, the Water Court issued a *Statewide Order Regarding Interbasin Transfer Claims*, which provides that claims will be decreed only in the basin of the point of diversion regardless of whether any portion of the place of use is located in a different basin.

Accordingly, the Elmore Ranch Objections that were filed during the Basin 41G Preliminary Decree objection period are addressed by this Master's Report. The issue remark stating the objections will be addressed during subsequent basin proceedings should be removed from all four claims.

7. Claims 41G 18891-00, 41G 18892-00, and 41G 18893-00 each received an issue remark providing notice that the DNRC had modified the ditch name during the claims review process. The claimants have either indicated that the ditch name is correct (claim 41G 18892-00) or have provided evidence to establish the correct ditch name (claims 41G 18891-00 and 41G 18893-00). The issue remarks have served their purpose of providing notice and should be removed from the claims.

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. Elmore Ranch provided sufficient evidence to overcome the prima facie status of the claims in this case by a preponderance of the evidence. The evidence shows that the claims have historically been diverted and used from April 1 to

October 31. It also establishes that the four claims have historically been diverted through the Buttleman Ditch point of diversion located in the NENESE of Sec 7, 1S, 1E.

2. All issue remarks on 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 the claims in this case do not overcome the prima facie status of the claims. They should be removed from the claim abstracts.

RECOMMENDATIONS

1. The claims in this case should be modified as provided above.
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.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Elmose Ranch LLC
18880 Schuringa Road
Three Forks, MT 59752

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

Water Right Number: 41G 18891-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: ELMOSE RANCH LLC
18880 SCHURINGA RD
THREE FORKS, MT 59752

Priority Date: DECEMBER 31, 1866

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 1.56 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: 615.00

Source Name: 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		NENESE	7	1S	1E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: BUTTLEMAN 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	320.00		E2	2	1N	1E	GALLATIN
2	115.00		SW	11	1N	1E	GALLATIN
3	140.00		W2E2	11	1N	1E	GALLATIN
4	40.00		E2E2NW	11	1N	1E	GALLATIN

Total: 615.00

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.

THIS APPROPRIATION OF WATER TAKES WATER FROM THE JEFFERSON RIVER DRAINAGE (BASIN 41G) AND USES IT IN THE MADISON RIVER DRAINAGE (BASIN 41F).

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

Water Right Number: 41G 18892-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: ELMOSE RANCH LLC
18880 SCHURINGA RD
THREE FORKS, MT 59752

Priority Date: DECEMBER 31, 1866

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/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: 615.00

Source Name: 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		NENESE	7	1S	1E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: BUTTLEMAN 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	320.00		E2	2	1N	1E	GALLATIN
2	115.00		SW	11	1N	1E	GALLATIN
3	140.00		E2	11	1N	1E	GALLATIN
4	40.00		E2E2NW	11	1N	1E	GALLATIN

Total: 615.00

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.

THIS APPROPRIATION OF WATER TAKES WATER FROM THE JEFFERSON RIVER DRAINAGE (BASIN 41G) AND USES IT IN THE MADISON RIVER DRAINAGE (BASIN 41F).

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

Water Right Number: 41G 18893-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: ELMOSE RANCH LLC
18880 SCHURINGA RD
THREE FORKS, MT 59752

Priority Date: DECEMBER 31, 1867

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 224.40 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: 115.00

Source Name: 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		NENESE	7	1S	1E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: BUTTLEMAN 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	115.00		SE	10	1N	1E	GALLATIN

Total: 115.00

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.

18893-00 22559-00

THIS APPROPRIATION OF WATER TAKES WATER FROM THE JEFFERSON RIVER DRAINAGE (BASIN 41G) AND USES IT IN THE MADISON RIVER DRAINAGE (BASIN 41F).

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

Water Right Number: 41G 22559-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: ELMOSE RANCH LLC
18880 SCHURINGA RD
THREE FORKS, MT 59752

Priority Date: DECEMBER 31, 1872

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 112.20 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: 115.00

Source Name: 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		NENESE	7	1S	1E	GALLATIN

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: BUTTLEMAN 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	115.00		SE	10	1N	1E	GALLATIN

Total: 115.00

Remarks:

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18893-00 22559-00

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