

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

\* \* \* \* \*

CLAIMANT: Greg Stohecker

OBJECTOR: Craig Mastandrea

**CASE 41G-0616-R-2024**  
41G 194555-00

**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 194555-00 is a flood irrigation water right from Willow Creek.
2. The claim appeared in the 41G Preliminary Decree with a DNRC issue remark stating:

ON JUNE 12, 2001 CRAIG MASTANDREA FILED A LATE OBJECTION TO THE PRIORITY DATE, FLOW RATE AND VOLUME STATING THAT THE 33.5 MINER'S INCHES CLAIMED SHOULD BE SPLIT AS FOLLOWS: 13.5 MINER'S INCHES WITH AN 1866 PRIORITY DATE AND 20 MINER'S INCHES WITH AN 1867 PRIORITY DATE. THIS WILL BE HEARD AFTER PROPER NOTICE ON THE NEXT OBJECTION LIST.

3. The Mastandrea Objection was filed June 12, 2001 and concerns the priority date and flow rate. However, the objection does not include any evidence to support Mastandrea's assertion. The statement of claim form for claim 41G 194555-00 identifies a flow rate of 33.33 MI (372.52 gpm) and a priority date of June 3, 1897. No evidence has been presented that contradicts the claimed flow rate and priority date.

4. In a February 2, 2024 Order, a deadline was set for Mastandrea to indicate whether he would pursue the 2001 Objection or for another party to file a motion for substitution for the Mastandrea Objection. The Order stated that if nothing was filed by the deadline the Mastandrea Objection would be dismissed and the issue remark would be removed from the claim. Nothing was filed by the deadline. The issue remark should be removed from the claim.

5. During claims reexamination an additional issue remark was placed on claim 41G 194555-00 stating:

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.

This issue remark is considered a notice-only issue remark. It does not require additional proceedings to resolve. The remark has served its notice purpose and 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.

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 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.

4. The late objection issue remark does not overcome the prima facie status of the claim. The issue remark should be removed from the claim. The notice only issue remark has served its notice purpose and should be removed from the claim.

5. If a claimant, objector, or intervenor fails to comply with an order issued by the water court, the water court may issue such orders of sanction with regard thereto as are just. Sanctions applied against claimants may include termination of the claim; or modification of the claim to conform with data provided by the department, information obtained by the court, or information included in an objection. Sanctions applied against objectors and intervenors may include dismissal of the objector or intervenor from the proceeding. Rule 22, W.R.Adj.R. No one responded to the court's order setting filing deadline concerning the late objection. The late objection to claim 41G 194555-00 should be dismissed.

#### RECOMMENDATIONS

1. The issue remarks should be removed from claim 41G 194555-00.
2. The late objection to claim 41G 194555-00 should be dismissed.

A Post Decree Abstract of Water Right Claims 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:**

Greg Stohecker  
110 KG Ranch  
Three Forks, MT 59752

Craig Mastandrea  
**PO Box 121**  
~~Willow Creek, MT 59760~~  
**(Return mail received)**

**Note: Service List Updated 4-11-24**

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

**Water Right Number:** 41G 194555-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** GREG STOHECKER  
110 KG RANCH  
THREE FORKS, MT 59752

**Priority Date:** JUNE 3, 1897

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 372.52 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:** 90.00

**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		NENWNE	31	1N	1E	GALLATIN

**Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** DUKE CARLS DITCH

**Period of Use:** APRIL 15 TO OCTOBER 15

**\*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	80.00		W2SE	30	1N	1E	GALLATIN
2	10.00		E2SES	30	1N	1E	GALLATIN

**Total:** 90.00