

Montana Water Court

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

\* \* \* \* \*

CLAIMANT: Janell Shaw; Lony Shaw; Lott Brothers Inc.

CASE 41G-0285-R-2021

41G 48958-00

41C 48960-00

41C 211269-00

**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. Claims 41G 48958-00, 41G 48960-00, and 41C 211269-00 appeared in the 41G Preliminary Decree with issue remarks.

2. The claimants were ordered to meet with the DNRC in an informal attempt to resolve the issue remarks appearing on the claims.

3. On October 25, 2021, the Kara Huyser, water resource specialist with the DNRC, filed a memorandum with its recommendations for issue remark resolution. The memo indicates that Calli Michaels contacted the DNRC on behalf of the claimants and provided information to resolve the issue remarks appearing on each claim.

**Claim 41G 48958-00**

4. Claim 41G 48958-00 received several issue remarks which are addressed below:

CLAIM WAS IMPROPERLY DESIGNATED TO BASIN 41C AND WAS INCLUDED IN THE 41C TEMPORARY PRELIMINARY DECREE ISSUED 11/14/1990. CLAIM WAS NOT INCLUDED IN THE BASIN 41G TEMPORARY PRELIMINARY DECREE ISSUED 10/17/1989.

The above remark is a notice-type issue remark. The purpose of the remark is to provide notice that claim 41G 48598-00 did not appear in the Basin 41G Temporary Preliminary Decree. The remark has served its purpose and should be removed.

THE CLAIMED PLACE OF USE AND ACRES IRRIGATED MAY BE QUESTIONABLE. REVIEW OF THE AVAILABLE DATA APPEARS TO INDICATE 235.00 ACRES IRRIGATED.

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

The three issue remarks above were placed on the claim because based on aerial imagery, it appeared that only 235 of the 280 claimed acres were historically irrigated. The DNRC memo indicates that Goodwin Gulch has intermittent flows, which may have caused the discrepancies in interpreting the aerial imagery. The claimant clarified the place of use and submitted a corresponding map to support the modified place of use. The DNRC memo indicates that the additional information provided by the claimant resolves

the issue remarks.

The decreed place of use was:

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	100.00		NW	35	3S	6W	MADISON
2	40.00		N2NE	35	3S	6W	MADISON
3	60.00		SW	26	3S	6W	MADISON
4	20.00		S2SE	26	3S	6W	MADISON
5	40.00		E2SE	27	3S	6W	MADISON
6	20.00		NE	34	3S	6W	MADISON
<b>Total:</b>	<b>280.00</b>						

The modified place of use is:

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	38.00		NWNE	35	3S	6W	MADISON
2	77.00		N2NW	35	3S	6W	MADISON
3	16.00		W2SWNW	35	3S	6W	MADISON
4	29.00		E2NE	34	3S	6W	MADISON
5	42.00		W2SW	26	3S	6W	MADISON
6	18.00		SWNW	26	3S	6W	MADISON
7	42.00		E2E2SE	27	3S	6W	MADISON
8	18.00		E2SENE	27	3S	6W	MADISON
<b>Total:</b>	<b>280.00</b>						

The DNRC water resource specialist agrees with the modified place of use proposed by the claimant and indicates that the place of use issue remark is resolved. The modified place of use is supported by the additional information provided by the claimant. The place of use should be modified as requested. While the evidence indicates that the place of use should be modified slightly to clarify the accurate location of the acreage, the total number of acres (280 maximum acres) should not change. Therefore, the flow rate and volume do not require modification and those issue remarks should be removed.

DITCH NAME 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.

The above issue remark is a notice-type issue remark. It provides notice of changes made to the claim since the issuance of the Basin 41G Temporary Preliminary

Decree. No objection was raised concerning the ditch name for claim 41G 48958-00. The issue remark has served its purpose of providing notice and should be removed.

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 09/20/2007 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY LONY AND JANELL SHAW, 406 N. SENATOR ST., TWIN BRIDGES, MT, 59754-9609.

The current ownership of claim 41G 48958-00 includes Lony and Janell Shaw. The ownership issue remark was placed on the claim in 2007 and is outdated. It should be removed from the claim.

THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE. PART OF THE PLACE OF USE APPEARS TO BE ON STATE LAND.

The updated place of use description does not include state land. The issue remark has been resolved by the modification to the place of use and should be removed.

### **Claim 41G 48960-00**

5. Claim 41G 48960-00 received the following issue remarks:

ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF 09/20/2007 , A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY LONY AND JANELL SHAW, 406 N. SENATOR ST., TWIN BRIDGES, MT, 59754-9609.

The current ownership of claim 41G 48960-00 includes Lony and Janell Shaw. The ownership issue remark was placed on the claim in 2007 and is outdated. It should be removed from the claim.

THE POINTS OF DIVERSION APPEAR TO BE INCORRECT. SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

According, to the DNRC memo, it appears that the claimants agree with the issue remark that the point of diversion should be corrected. The claimants state that the initial point of diversion is where the Seyler-Tash Ditch begins at a headgate on Wisconsin Creek in the NENWSE of Section 14, T4S, R6W. In support, the claimants provide a map depicting the initial point of diversion, the Seyler-Tash Ditch, and the place of use.

The DNRC agrees with the claimants' clarification of the point of diversion. The point of diversion should be corrected. The point of diversion issue remark is resolved and should be removed from the claim.

THE SOURCE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF THE POINT OF DIVERSION ISSUE.

The DNRC explains that the area surrounding the Seyler-Tash Ditch is heavily irrigated and appears to have an extremely high water table. The claimants state that "the ditch collects water from waste, seepage, and springs." The DNRC agrees with the claimant that the source for claim 41G 48960-00 is accurate as decreed: "Waste & Seepage, Unnamed Tributary of Jefferson River". The source issue remark is resolved and should be removed from the claim.

The claimants and the DNRC agree the source information remark appearing on the claim that states the source is also known as Lott Swamp is inaccurate. The remark should be removed. Instead, a remark stating, "the source is water collected along the entire length of the Seyler-Tash Ditch" should be added to the claim.

#### **Claim 41C 211269-00**

6. Claim 41C 211269-00 received the following issue remarks:

FEE INSUFFICIENT TO COVER IMPLIED CLAIM. TOTAL AMOUNT DUE \$40.00.

The DNRC memo states that the Claimants indicated a payment will be made to the DNRC to resolve the issue remark. The issue remark may be removed from the claim abstract.

#### **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 claimants provided sufficient evidence to the DNRC to resolve the issue remarks appearing on the claims.

#### RECOMMENDATIONS

1. Claims 41G 48958-00 and 41G 48960-00 should be modified as provided above.
2. The issue remarks should be removed from the claims.

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.

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Madeleine Weisz  
Senior Water Master

#### Service via Electronic Mail:

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**WATER COURT**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**JEFFERSON RIVER**  
**BASIN 41G**

**Water Right Number:** **41G 48958-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
JANELL SHAW  
406 N SENATOR ST  
TWIN BRIDGES, MT 59754

LONY SHAW  
406 N SENATOR ST  
TWIN BRIDGES, MT 59754

LOTT BROS INC  
406 N SENATOR ST  
TWIN BRIDGES, MT 59754 9609

**Priority Date:** MAY 1, 1928

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 5.00 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 280.00

**Source Name:** GOODRICH GULCH

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWNE	36	3S	6W	MADISON

**Period of Diversion:** APRIL 30 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** M LOTT DITCH

**Period of Use:** APRIL 30 TO OCTOBER 15

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Otr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	38.00		NWNE	35	3S	6W	MADISON
2	77.00		N2NW	35	3S	6W	MADISON
3	16.00		W2SWNW	35	3S	6W	MADISON
4	29.00		E2NE	34	3S	6W	MADISON
5	42.00		W2SW	26	3S	6W	MADISON
6	18.00		SWNW	26	3S	6W	MADISON

7	42.00	E2E2SE	27	3S	6W	MADISON
8	18.00	E2SENE	27	3S	6W	MADISON
<b>Total:</b>	<b>280.00</b>					

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**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.

48957-00      48958-00      48960-00      48961-00      48962-00      211269-00

**WATER COURT**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**RUBY RIVER**  
**BASIN 41C**

**Water Right Number:** **41C 48960-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
JANELL SHAW  
406 N SENATOR ST  
TWIN BRIDGES, MT 59754

LONY SHAW  
406 N SENATOR ST  
TWIN BRIDGES, MT 59754

LOTT BROS INC  
406 N SENATOR ST  
TWIN BRIDGES, MT 59754 9609

**Priority Date:** JUNE 1, 1905

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 6.44 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 170.00

**Source Name:** WASTE & SEEPAGE, UNNAMED TRIBUTARY OF JEFFERSON RIVER

**Source Type:** GROUNDWATER

THE SOURCE IS WATER COLLECTED ALONG THE ENTIRE LENGTH OF THE SEYLER-TASH DITCH.

**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		NENWSE	14	4S	6W	MADISON

**Period of Diversion:** APRIL 30 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** SEYLER-TASH DITCH

**Period of Use:** APRIL 30 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	60.00		SE	27	3S	6W	MADISON
2	15.00		SW	26	3S	6W	MADISON
3	70.00		NE	34	3S	6W	MADISON
4	15.00		NW	35	3S	6W	MADISON

5	10.00	SE	34	3S	6W	MADISON
<b>Total:</b>	170.00					

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**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.

48957-00      48958-00      48960-00      48961-00      48962-00      211269-00

THIS APPROPRIATION OF WATER TAKES WATER FROM THE RUBY RIVER DRAINAGE (BASIN 41C ) AND USES IT IN THE JEFFERSON RIVER DRAINAGE (BASIN 41G ) AND THE RUBY RIVER DRAINAGE (BASIN 41C ). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.

**WATER COURT**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**RUBY RIVER**  
**BASIN 41C**

**Water Right Number:** **41C 211269-00** STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**  
JANELL SHAW  
406 N SENATOR ST  
TWIN BRIDGES, MT 59754

LONY SHAW  
406 N SENATOR ST  
TWIN BRIDGES, MT 59754

LOTT BROS INC  
406 N SENATOR ST  
TWIN BRIDGES, MT 59754 9609

**Priority Date:** JUNE 1, 1905

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 6.44 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 170.00

**Source Name:** WISCONSIN 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		NWNESE	14	4S	6W	MADISON

**Period of Diversion:** APRIL 30 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** SEYLER-TASH DITCH

SECONDARY POINT OF DIVERSION OFF SEYLER-TASH DITCH LOCATED IN SEC 34 TWP 03S RGE 06W MADISON COUNTY.

**Period of Use:** APRIL 28 TO OCTOBER 19

**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	60.00		SE	27	3S	6W	MADISON
2	15.00		SW	26	3S	6W	MADISON
3	70.00		NE	34	3S	6W	MADISON
4	15.00		NW	35	3S	6W	MADISON

5	10.00	SE	34	3S	6W	MADISON
<b>Total:</b>	170.00					

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**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.

48957-00      48958-00      48960-00      48961-00      48962-00      211269-00

THIS APPROPRIATION OF WATER TAKES WATER FROM THE RUBY RIVER DRAINAGE (BASIN 41C ) AND USES IT IN THE JEFFERSON RIVER DRAINAGE (BASIN 41G ) AND THE RUBY RIVER DRAINAGE (BASIN 41C ). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.