

Montana Water Court  
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ELECTRONICALLY FILED

41G-0397-R-2021

December 27, 2021

Montana Water Court

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

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CLAIMANT: 105 Trails End Lane LLC

OBJECTOR: 105 Trails End Lane LLC

**CASE 41G-0397-R-2021**  
41G 197153-00  
41G 197158-00

**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 197153-00 and 41G 197158-00 were consolidated to address the objections filed against the claims by claimant 105 Trails End Lane, LLC.

2. A filing deadline was set for the claimant to indicate how its objections may be resolved and provide evidence in support.

3. On November 17, 2021, the claimant filed "Resolution of Objection with Evidence in Support." The claimant requests the claims be modified to conform with historical use as described below.

#### Claim 41G 197153-00

Claim 41G 197153-00 appeared in the 41G Preliminary Decree as a direct from source stock claim from House Spring. The claimant explains that the means of diversion is actually a pipeline and the flow rate should be corrected to 13 gpm. The claim was originally claimed with a means of diversion of "gravity flow" and a flow rate of 13 gpm. It is not clear why the means of diversion and flow rate were changed on the abstract, but the claimant asserts that the actual means of diversion is a pipeline.

In support, the claimant explains that both claims in this case are water rights diverted from House Spring in the SESESW of Section 34, T4S, R2W. Claim 41G 197158-00 is a domestic claim. It was involved in prior water court proceedings in which the Master's Report recommended the means of diversion be modified to pipeline based on an affidavit of Larry Heavrin. It appears that the same change should have been applied to claim 41G 197153-00. The evidence supports the requested changes to claim 41G 197153-00. The means of diversion should be corrected to pipeline and the flow rate should be corrected to 13 gpm.

#### Claim 41G 197158-00

Claim 41G 197158-00 is a domestic water right. It appeared in the preliminary decree with a volume of 7 AF. The claimant requests that the volume be increased to 9 AF. In support, the claimant explains that the claimed volume was 21.08 AF. The claimant states that the volume was reduced based on an incorrect DNRC guideline. The claimant asserts that application of the correct DNRC guideline results in a volume of 9 AF: 1 household (1.5 AF) + 3 acres (2.5 AF/ac) = 9AF. The requested

volume is less than what was originally claimed and should be accepted by the court. The volume of claim 41G 197158-00 should be corrected to 9 AF.

#### 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. The explanation and evidence provided by the claimant support the requested modifications to claims 41G 197153-00 and 41G 197158-00 by a preponderance of the evidence. The proposed modifications should be accepted by the Court.

#### RECOMMENDATIONS

1. Claims 41G 197153-00 and 41G 197158-00 should be modified as provided above.

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

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

**Water Right Number:** 41G 197153-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** 105 TRAILS END LANE LLC  
4627 FAIRFIELD DR  
CORONA DEL MAR, CA 92625

**Priority Date:** JANUARY 1, 1916

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 13.00 GPM

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF NORWEGIAN CREEK

**Source Type:** GROUNDWATER

ALSO KNOWN AS HOUSE SPRING

**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		SESEW	34	2S	2W	MADISON

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PIPELINE

**Period of Use:** JANUARY 1 TO DECEMBER 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			NESWSE	34	2S	2W	MADISON

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

**Water Right Number:** 41G 197158-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** 105 TRAILS END LANE LLC  
4627 FAIRFIELD DR  
CORONA DEL MAR, CA 92625

**Priority Date:** JANUARY 1, 1928

**Type of Historical Right:** USE

**Purpose (Use):** DOMESTIC

**Flow Rate:** 13.00 GPM

**Volume:** 9.00 AC-FT

**Households:** 1

**Maximum Acres:** 3.00

**\*Source Name:** SPRING, UNNAMED TRIBUTARY OF NORWEGIAN CREEK

**Source Type:** GROUNDWATER

ALSO KNOWN AS HOUSE SPRING

**\*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		SESESW	34	2S	2W	MADISON

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PIPELINE

**Period of Use:** JANUARY 1 TO DECEMBER 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	3.00		NESWSE	34	2S	2W	MADISON

**Total:** 3.00