

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

\*\*\*\*\*

CLAIMANTS: Melvin D. Maichel; Meri C. Maichel

OBJECTORS: Dry Hollow Inc.; Rice Ranches; Barry L.  
Rice; Diane J. Rice

COUNTEROBJECTORS: Melvin D. Maichel

NOTICE OF INTENT TO APPEAR: Adam J. Clark; 105  
Trails End Lane, LLC; Dry  
Hollow Inc.; Rice Ranches;  
Barry L. Rice; Diane J. Rice;

**CASE 41G-0011-R-2019**

41G 35265-00

41G 35266-00

41G 115561-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to a Master's Report be filed within 10 days of the date of the Master's Report. Because this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this 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 35265-00, 41G 35266-00, and 41G 115561-00 appeared in the Basin 41G Preliminary Decree, issued February 15, 2018. The claims were consolidated into this case to address the objections received by the claims.

2. On May 26, 2021, Claimants Melvin Maichel and Meri Maichel filed a withdrawal of water right claim 41G 35265-00.

3. On May 28, 2021 Dry Hollow Inc., Rice Ranches, Barry Rice, and Diane Rice withdrew their objections and NOIAs for all claims in the case.

4. On June 1, 2021, 105 Trails End Lane, LLC filed withdrawals of its NOIAs filed in the case.

5. Claim 41G 35266-00 received a P88 issue remark noting that ditch name was modified as a result of DNRC review during reexamination. Claim 41G 115561-00 did not receive any issue remarks. The P88 remark is a notice-type issue remark. Notice-type issue remarks provide water users notice of potential issues with a claim but may be removed once notice has been provided. The necessary notice has been provided; the P88 issue remark appearing on claim 41G 35266-00 should be removed.

6. Adam Clark filed NOIAs on claims 41G 35265-00 and 41G 35266-00. A deadline was set for Clark to indicate whether his NOIAs were resolved. The order stated that if nothing was filed by the deadline, the court would consider Clark's NOIAs resolved. Nothing was filed by the deadline.

### **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. No evidence was presented to overcome the prima facie status of the claim.

2. All issue remarks to 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 remark appearing on claim 41G 35266-00 does not overcome the prima facie status of the claim.

3. If an objector fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Sanctions applied against objectors may include dismissal of the objector from the proceeding. Rule 22, W.R.Adj.R. Adam Clark did not respond to several court orders, including the most recent order requiring him to indicate whether his NOIAs were resolved. His NOIAs should be considered resolved.

#### RECOMMENDATIONS

1. Claim 41G 35265-00 should be dismissed from the adjudication.
2. The P88 issue remark should be removed from claim 41G 35266-00.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommendations above have been made in the state's centralized database.

---

Madeleine Weisz  
Senior Water Master

**Service via USPS Mail:**

Adam J. Clark  
PO Box 227  
Harrison, MT 59735

**Service via Electronic Mail:**

Dana E. Pepper  
Bina R. Peters  
River and Range Law, PLLC  
PO Box 477  
Bozeman, MT 59771  
(406) 599-7424  
[office@riverandrangelaw.com](mailto:office@riverandrangelaw.com)  
[dana@riverandrangelaw.com](mailto:dana@riverandrangelaw.com)  
[bina@riverandrangelaw.com](mailto:bina@riverandrangelaw.com)

Ryan K. Mattick  
Cusick, Farve, Mattick & Refling, P.C  
PO Box 1288  
Bozeman, MT 59771-1288  
(406) 587-5511  
[office@cmrlawmt.com](mailto:office@cmrlawmt.com)

Patti L. Rowland  
Calli J. Michaels  
Bloomquist Law Firm, P.C.  
PO Box 1418  
Dillon, MT 59725-1418  
(406) 683-8795  
[blf@helenalaw.com](mailto:blf@helenalaw.com)

John E. Bloomquist  
Bloomquist Law Firm, PC  
3355 Colton Drive, Suite A  
Helena, MT 59602  
(406) 502-1244  
[blf@helenalaw.com](mailto:blf@helenalaw.com)

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

**Water Right Number:**      **41G 35265-00**      STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:** **DISMISSED**

**Owners:**                      MELVIN D MAICHEL  
                                        PO BOX 154  
                                        HARRISON, MT 59735  
  
                                        MERI C MAICHEL  
                                        PO BOX 154  
                                        HARRISON, MT 59735

**Priority Date:**

**Type of Historical Right:**

**Purpose (Use):**                      IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:**                      DRY HOLLOW CREEK

**Source Type:**                      SURFACE WATER

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

**Period of Use:**

**Place of Use:**

---

**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

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

**Water Right Number:**      **41G 35266-00**      STATEMENT OF CLAIM

**Version:**      3 -- POST DECREE

**Status:** ACTIVE

**Owners:**                      MELVIN D MAICHEL  
                                     PO BOX 154  
                                     HARRISON, MT 59735

                                     MERI C MAICHEL  
                                     PO BOX 154  
                                     HARRISON, MT 59735

**\*Priority Date:**                      FEBRUARY 11, 1924

**Type of Historical Right:**      USE

**Purpose (Use):**                      IRRIGATION

**Irrigation Type:**                  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:**                  50.00

**\*Source Name:**                      UNNAMED TRIBUTARY OF DRY HOLLOW CREEK

**Source Type:**                      SURFACE WATER

                                     ALSO KNOWN AS SAND HOLLOW CREEK

**\*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		SEWNNE	8	2S	1W	MADISON

**\*Period of Diversion:**      APRIL 1 TO NOVEMBER 1

**Diversion Means:**                  HEADGATE

**Ditch Name:**                      LES MARTIN DITCH NO. 1

2		SWSWNE	8	2S	1W	MADISON
---	--	--------	---	----	----	---------

**\*Period of Diversion:**      APRIL 1 TO NOVEMBER 1

**Diversion Means:**                  HEADGATE

**Ditch Name:**                      LES MARTIN DITCH NO. 1

**\*Period of Use:**                      APRIL 1 TO NOVEMBER 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	50.00		NE	8	2S	1W	MADISON

**Total:**                      50.00

---

**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.

35264-00

35265-00

35266-00

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

**Water Right Number:**      **41G 115561-00**      STATEMENT OF CLAIM

**Version:**      4 -- POST DECREE

**Status:** ACTIVE

**Owners:**                      MELVIN D MAICHEL  
   PO BOX 154  
   HARRISON, MT 59735

   MERI C MAICHEL  
   PO BOX 154  
   HARRISON, MT 59735

**Priority Date:**                      JULY 21, 1908

**Type of Historical Right:**      FILED

**Purpose (Use):**                      IRRIGATION

**Irrigation Type:**              SPRINKLER

**Flow Rate:**                      3.03 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:**                      80.00

**Source Name:**                      UNNAMED TRIBUTARY OF DRY HOLLOW CREEK

**Source Type:**                      SURFACE WATER

   ALSO KNOWN AS SAND HOLLOW CREEK

**\*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		NESEW	8	2S	1W	MADISON

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

**Diversion Means:**              PUMP

**Period of Use:**                      APRIL 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	80.00		E2SE	8	2S	1W	MADISON

**Total:**                      80.00

---

**Remarks:**

THIS WATER RIGHT CLAIM WAS MODIFIED BY THE MONTANA WATER COURT IN A CERTIFICATION ACTION PURSUANT TO SECTION 85-2-406(2)(B), MCA.