

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

* * * * *

CLAIMANT: State of Montana Board of Land Commissioners

OBJECTOR: Christene E. Wagner

COUNTEROBJECTORS: Chad J. Armstrong; Trista L. Armstrong

41G-0113-R-2020
41G 214797-00

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

Water right claim 41G 214797-00 is an irrigation claim owned by the Montana State Board of Land Commissioners, Trust Land Management Division (TLMD). It was

generated by the Water Court in 1995 pursuant to an agreement between Christene Wagner (Wagner), George Armstrong (the predecessor to Chad and Trista Armstrong) and TLMD (1995 Stipulation).

The claim appeared in the Preliminary Decree for the Jefferson River (Basin 41G) issued on February 15, 2018. Wagner objected to the claim's point of diversion and source. Chad and Trista Armstrong (the Armstrongs) filed a counterobjection to all elements of the claim. The claim also received an issue remark from the Department of Natural Resources and Conservation (DNRC) identifying potential legal or factual issues with the claim. The Water Court consolidated the claim into case 41G-0113-R-2020 to address the objection, counterobjection, and issue remark.

On January 15, 2021, the Armstrongs and TLMD filed a joint status report stating that resolution of this case is governed by the 1995 Stipulation. The Armstrongs moved for summary judgment on the issue of whether Wagner was bound by the terms of the 1995 Stipulation and therefore prohibited from challenging the claim's point of diversion and source. On April 14, 2022, the Water Master granted the motion, stating, "Wagner is bound by her agreement to the point of diversion and source of claim 41G 214797-00 in the 1995 Stipulation." The Court therefore dismissed Wagner's objection to those elements. Order on Motions, April 14, 2022.

The Armstrongs and TLMD then informed the court that there were no outstanding issues in this case. Wagner moved the Court to reconsider its dismissal of her objection and its denial of additional time to address the point of diversion. TLMD opposed Wagner's Motion for Reconsideration.

FINDINGS OF FACT

1. Water right claim 41G 214797-00 appeared in the Preliminary Decree with a clerical error in its place of use description. Specifically, due to an error in part of the 1995 Stipulation and 1995 Master's Report in case 41G-133,¹ the claim's Place of Use ID

¹ The 1995 Stipulation correctly identified that the claim was for use on the State-owned land in the E2NW and W2NE of Section 16, T1S, R2W. This is consistent with Montana Cadastral records showing state ownership. However, in the portion of the 1995 Stipulation indicating the requested amendment, POU No. 2 was described as the W2NW of Section 16. This was further confused when the hand-written abstract modification following the 1995 Master's Report was misinterpreted to read N2NW of Section 16.

No. 2 reads N2NW instead of W2NE Section 16, T1S, R2W. The following modification should be made to correct the clerical error:

<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	13.00		E2NW	16	1S	2W	Madison
2	4.00		N2NW <u>W2NE</u>	16	1S	2W	Madison

2. The claim also received the following issue remark:

CREATION OF THIS IMPLIED CLAIM AFTER ISSUANCE OF THE TEMPORARY PRELIMINARY DECREE WAS CONTINGENT UPON CERTAIN CHANGES BEING MADE TO THE PRELIMINARY DECREE OF CLAIMS 41G 143539-00, 41G 196694-00, 41G 196695-00 AND 41G 196696-00. IN ACCORDANCE WITH A STIPULATION FILED ON MAY 15, 1995 IN CASE 41G-133.

This issue remark was placed on the claim to ensure changes were made to claims 41G 143539-00, 41G 196694-00, 41G 196695-00 AND 41G 196696-00. Each of those claims also received issue remarks indicating the changes that were necessary pursuant to the 1995 Stipulation. The status of those claims is as follows:

3. Claims 41G 196695-000 and 41G 196696-00 were consolidated into case 41G-103-R-2020. In that case, which is stayed pending resolution of this case, the only objector has withdrawn its objection contingent upon the Stipulation being implemented. *See*, Case 41G-0103-R-2020. TLMD's Conditional Withdrawal of Objections, September 29, 2020. The Water Court has already implemented the Stipulation as it relates to the remaining two claims: 41G 143539-00 in case 41G-0101-R-2020 and 41G 196694-00 in case 41G-0102-R-2020.

APPLICABLE LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA.

2. A properly filed claim of an existing right or an amended claim of existing right constitutes 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.

3. 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.

4. The Water Court may correct a clerical mistake or a mistake arising from oversight or omission where one is found in a part of the record. Rule 60(a), M.R.Civ.P.

DISCUSSION AND CONCLUSIONS OF LAW

1. Wagner asks the Court to reconsider its dismissal of her objection and denial of her request for additional time. She argues that the point of diversion of claim 41G 214797-00 is historically inaccurate, and the Court should allow her to pursue its correction. TLMD opposes Wagner's request because, in part, the "Court's decision that the 1995 stipulation controls the water rights in this case was not erroneous." Response to Motion for Reconsideration at 2. This Water Master agrees.

Claim 41G 214797-00 is entitled to prima facie status and the burden of showing the elements of the claim do not accurately reflect the historical use rests on Wagner. But Wagner has already agreed to the elements of claim 41G 214797-00 in the 1995 Stipulation. The Court generated this claim based on that agreement, and this Water Master has determined Wagner is bound by that agreement. Order on Motions at 5.

The Water Court strongly prefers resolution of water right issues on their merits. However, allowing parties to present evidence directly contradicting their binding Stipulations previously approved by the Court would introduce uncertainty into the Water Court's adjudication process. It could also delay the Water Court's issuance of final decrees by encouraging objections to issues that were previously considered resolved.

This Water Master therefore declines to consider Wagner's substantive evidence challenging the claim's point of diversion. Wagner's objection was properly dismissed based on her agreement in the 1995 Stipulation. Her Motion for Reconsideration is DENIED.

2. Wagner's Objection was dismissed pursuant to this Court's April 14, 2022 Order on Motions. Based on information before the Court, the Armstrongs' Counterobjection is also resolved.

3. The Place of Use for claim 41G 214797-00 should be corrected as described in Finding of Fact No. 1 above to correct a clerical mistake arising from an oversight in the 1995 Stipulation pursuant to Rule 60(a), M.R.Civ.P.

4. The issue remark stating that changes to this claim were contingent upon changes being made to claims 41G 143539-00, 41G 196694-00, 41G 196695-00, and 41G 196696-00 is resolved because those changes have either already been made or will be made upon the resolution of this case. The issue remark should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that Court modify the claim as described above.

A post-decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

Eyvind Ostrem
Water Master

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

Water Right Number: 41G 214797-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620 1601

***Priority Date:** JULY 10, 1890

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 145.90 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: 17.00

Source Name DOGTOWN SEWER

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		NESWSW	9	1S	2W	MADISON

Period of Diversion: APRIL 15 TO NOVEMBER 15

Diversion Means: PUMP

MEANS OF DIVERSION INCLUDES A PUMP AND PIPELINE.

Period of Use: APRIL 15 TO NOVEMBER 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	13.00		E2NW	16	1S	2W	MADISON
2	4.00		W2NE	16	1S	2W	MADISON
Total:	17.00						

Remarks:

THIS RIGHT CAN BE CONVEYED TO STATE LAND IN SEC 16, TWP 01S, RGE 02W, BY MEANS OF A PIPELINE RUNNING SOUTHEASTERLY ALONG THE EASTERN BOUNDARY OF THE PLACE OF USE OF WATER RIGHT 41G-W-143539-00 IN SEC 09, TWP 01S, RGE 02W, UNTIL IT INTERSECTS WITH STATE LAND, AND FROM THAT POINT BY PIPELINE TO THE DESIGNATED PLACE OF USE.

Service via Electronic Mail

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