

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

\* \* \* \* \*

CLAIMANTS: Lilly G. Cavagnolo; Donna M. Townsend

**CASE 41G-0452-R-2022**  
41G 6064-00

NOTICE OF INTENT TO APPEAR: Lilly G. Cavagnolo

**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 6064-00 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 June 16, 2022, Kara Huyser, water resource specialist with the DNRC, filed a memorandum with recommendations for issue remark resolution.
4. Claim 41G 6064-00 received the following issue remarks:  
  
THE CLAIMED PLACE OF USE AND ACRES IRRIGATED MAY BE QUESTIONABLE.  
REVIEW OF THE AVAILABLE DATA APPEARS TO INDICATE 3.00 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.
5. According, to the DNRC memo, Claimant Lily Cavagnolo contacted the DNRC to discuss the issue remarks. Cavagnolo agreed with the DNRC that the actual domestic irrigation is 3.0 acres. The DNRC indicates that the claimed flow rate and volume do not require modification. Reducing the place of use to 3.0 acres resolves the issue remarks appearing on the abstract and is supported by the information before the court. The issue remarks should be removed.

### **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. If a claimant 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. Rule 22, W.R.Adj.R.

4. If a claimant agrees to reduce or limit an element of a claim, the water court may accept the claimant's requested reduction or limitation without further presentation of evidence. Rule 17(c), W.R.Adj.R.

5. Claimant Cavagnolo agreed to reduce the place of use to resolve the issue remarks appearing on claim 41G 6064-00. Co-claimant Donna Townsend did not participate in issue remark resolution as ordered by the court. If Townsend does not agree with the reduction to place of use, she may object to this Master's Report.

### RECOMMENDATIONS

1. Claim 41G 6064-00 should be modified as provided above.

2. The issue remarks should be removed from the claim.

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 USPS Mail:**

Lilly G. Cavagnolo  
~~5527 York Road~~  
~~Helena, MT 59602-6488~~  
**1 Jefferson River Road**  
**Three Forks, MT 59752-9765**

Donna M. Townsend  
1 Jefferson River Road  
Three Forks, MT 59752-9765

**Note: Service List Updated 7-21-2022**

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

**Water Right Number:** 41G 6064-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** DONNA M TOWNSEND  
1 JEFFERSON RIVER RD  
THREE FORKS, MT 59752 9765

G LILLY CAVAGNOLO  
5527 YORK RD  
HELENA, MT 59602 6488

**Priority Date:** DECEMBER 31, 1864

**Type of Historical Right:** FILED

**Purpose (use):** DOMESTIC

**Flow Rate:** 27.00 GPM

**Volume:** 7.00 AC-FT

**Households:** 2

**Maximum Acres:** 3.00

**Source Name** UNNAMED TRIBUTARY OF JEFFERSON RIVER

**Source Type:** SURFACE WATER

ALSO KNOWN AS UNNAMED CREEK IN WATER RESOURCE SURVEY FOR  
JEFFERSON COUNTY

**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		SWSWNE	15	1N	1W	JEFFERSON

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

**Diversion Means:** FLOWING

**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		NWNWNW	23	1N	1W	JEFFERSON

**Total:** 3.00

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

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