

Montana Water Court
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ELECTRONICALLY FILED

41G-0166-R-2022

November 25, 2022

Montana Water Court

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

* * * * *

CLAIMANT: Christene E. Wagner

41G-0166-R-2022
41G 143538-00

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, conclusions 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 to 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 143538-00 appeared in the Preliminary Decree for the Jefferson River Basin (Basin 41G) issued February 15, 2018. The claim did not receive

objections but did receive an issue remark that identifies potential legal or factual issues with the water right. Claim 41G 143538-00 is consolidated into case **41G-0166-R-2022** to resolve the issue remark.

FINDINGS OF FACT

1. Water right claim 41G 143538-00 was previously modified pursuant to a May 15, 1995 Stipulation between Claimant Christene Wagner, the State of Montana Department of State Lands, and a neighboring water user, George Armstrong. In addition to modifying this claim, the Stipulation requested the creation of an implied claim and changes to four additional claims. The changes to those claims were deferred until notice could be provided to other water users in the Preliminary Decree.

2. To ensure the Stipulation was appropriately applied to all relevant claims following notice in the Preliminary Decree, the following issue remark was placed on claim 41G 143538-00:

CHANGES MADE TO THE ACRES IRRIGATED, PLACE OF USE, PERIOD OF USE AND POINT OF DIVERSION IN THE TEMPORARY PRELIMINARY DECREE OF THIS CLAIM WERE CONTINGENT UPON CERTAIN CHANGES BEING MADE TO THE PRELIMINARY DECREE OF 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.

3. The Preliminary Decree was issued on February 15, 2018. The Water Court then implemented the Stipulation's requested changes on claim 41G 143539-00 in case 41G-0101-R-2020, claim 41G 196694-00 in case 41G-0102-R-2020, and claims 41G 196695-000 and 41G 196696-00 in case 41G-0103-R-2020.¹

4. This Master's Report was postponed pending the resolution of issues in water court case 41G-113-R-2020. In that case, Christine Wagner sought several changes that would deviate from the terms of the Stipulation and could impact the claim in this case. However, an order adopting the master's report in case 41G-0113-R-2020 was issued on November 2, 2022, resolving the remaining issues in that case consistent with the Stipulation.

¹ All requested modifications from the Stipulation were made except the increase to the claims' periods of use and diversion. The periods of use and diversion of the Armstrong claims were already increased by a 2013 Master's Report in Case 41G-A15 after notice was provided to water users pursuant to §85-2-223(6).

PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.3. 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. Section 85-2-248(3), MCA.

CONCLUSIONS OF LAW

1. The issue remark is resolved by implementation of the 1995 Stipulation's requested changes to claims 41G 143539-00, 41G 196694-00, 41G 196695-00 and 41G 196696-00. Those changes have been made, and 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 the Court adopt the changes as outlined above.

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

Eyvind Ostrem
Senior Water Master

Service via USPS Mail

Christene E Wagner
PO Box 191
Harrison, MT 59735

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

Water Right Number: 41G 143538-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CHRISTENE E WAGNER
PO BOX 191
HARRISON, MT 59735

Priority Date: JUNE 25, 1900

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/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:** 103.00

***Source Name:** UNNAMED TRIBUTARY OF ANTELOPE CREEK

Source Type: SURFACE WATER
ALSO KNOWN AS WHITE GULCH

***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		SWNE	16	1S	2W	MADISON

***Period of Diversion:** APRIL 15 TO NOVEMBER 15

Diversion Means: PUMP/HEADGATE W/DITCH OR PIPELINE

2		NESE	16	1S	2W	MADISON
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***Period of Diversion:** APRIL 15 TO NOVEMBER 15

Diversion Means: PUMP/HEADGATE W/DITCH OR 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	53.00		E2NE	16	1S	2W	MADISON
2	50.00		SE	9	1S	2W	MADISON

Total: 103.00

Remarks:

IMPLIED CLAIM NO. 41G 214797-00 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.