

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

CLAIMANTS: Allison A. Wentzel; Shawn S. Wentzel

CASE 41G-0619-R-2024
41G 197185-00

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 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 197185-00 appeared in the Basin 41G Preliminary Decree.

Claim 41G 197185-00 is an irrigation water right from a spring. During claim examination, claim 41G 197185-00 received the following issue remarks:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. THERE MAY BE PROBLEMS WITH VOLUME.

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

RESERVOIR RECORD WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

2. The Claimant was ordered to meet with the DNRC to resolve the first remark. The other two remarks are considered notice-only remark and may be removed without further proceedings.

3. On May 17, 2024, the DNRC filed a Memorandum with the Court. The DNRC explains that the reservoir associated with claim 41G 197185-00 has a significantly smaller capacity than the claimed volume. When a reservoir is part of a water right, but water storage is only a small component of the right, the water right should be considered a direct flow system. A direct flow system should be quantified by flow rate rather than volume. The DNRC recommended the volume quantification be removed and replaced with a remark that states:

PRIMARYLY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.

4. The DNRC's memorandum did not address the flow rate for claim 41G 197185-00. When a claim is not quantified by volume, it should be quantified by flow rate. Claim 41G 197185-00 appeared in the decree with a flow rate remark stating, "a specific flow rate has not been decreed for this use from this onstream reservoir. The flow rate is limited to the minimum amount necessary to sustain this purpose." To resolve the

issues in this case, the flow rate information remark should be removed and instead the flow rate should be identified as 7.5 cfs (300 MI), which is the flow rate claimed on the Statement of Claim form when it was filed in 1982.

5. The claimants were provided with an opportunity to comment on the proposed resolution of the issue remarks. The Order Setting Filing Deadline stated that if nothing was filed by the deadline the Court would conclude that the claimant agrees with the proposed issue remark resolution of replacing the volume with a standard information remark and quantifying the claim by a flow rate of 7.5 cfs. Nothing was filed by the deadline. Claim 41G 197185-00 should be modified as provided above.

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. 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.

3. The information before the court and the recommendations made by the DNRC is sufficient to support the following modifications to claim 41G 197185-00: modify the claim to reflect that it is primarily a direct flow system; replace the volume quantification with a flow rate of 7.5 cfs; and remove the issue remarks appearing on the claim.

RECOMMENDATIONS

1. Claim 41G 197185-00 should be modified as provided above.
2. The issue remarks should be removed from 41G 197185-00.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the modifications have been made in the statewide database.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Allison A. Wentzel
Shawn S. Wentzel
PO Box 381
Twin Bridges, MT 59754

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

Water Right Number: 41G 197185-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ALLISON A WENTZEL
PO BOX 381
TWIN BRIDGES, MT 59754

SHAWN S WENTZEL
PO BOX 381
TWIN BRIDGES, MT 59754

Priority Date: DECEMBER 31, 1863

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 7.50 CFS

Volume: PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 292.00

Source Name: SPRING, UNNAMED TRIBUTARY OF SPRING CREEK

Source Type: GROUNDWATER

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		S2SENE	9	3S	5W	MADISON

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: DAM

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNESE	9	3S	5W	MADISON

Diversion to Reservoir: DIVERSION # 1

Dam Height: 8.00 FEET

Depth: 5.00 FEET

Surface Area: 1.30 ACRES

Capacity: 2.60 ACRE-FEET

THE CAPACITY, DAM HEIGHT, MAXIMUM DEPTH, AND SURFACE AREA HAVE BEEN ESTIMATED BY DNRC.

Period of Use: MAY 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	40.00		NWNW	9	3S	5W	MADISON
2	8.00		NWNENW	9	3S	5W	MADISON
3	10.00		NENENW	9	3S	5W	MADISON
4	8.00		NWNWNE	9	3S	5W	MADISON
5	4.00		SWNENW	9	3S	5W	MADISON
6	5.00		SENENW	9	3S	5W	MADISON
7	4.00		SWNWNE	9	3S	5W	MADISON
8	20.00		W2SWNW	9	3S	5W	MADISON
9	10.00		NESWNW	9	3S	5W	MADISON
10	1.00		NWSENW	9	3S	5W	MADISON
11	9.00		SESWNW	9	3S	5W	MADISON
12	8.00		NENESW	4	3S	5W	MADISON
13	8.00		NWNWSE	4	3S	5W	MADISON
14	8.00		NENWSE	4	3S	5W	MADISON
15	6.00		SENESE	4	3S	5W	MADISON
16	6.00		SWNWSE	4	3S	5W	MADISON
17	6.00		SWNESE	4	3S	5W	MADISON
18	8.00		NWNESE	4	3S	5W	MADISON
19	4.00		NENESE	4	3S	5W	MADISON
20	6.00		SEWSE	4	3S	5W	MADISON
21	3.00		SENESE	4	3S	5W	MADISON
22	8.00		NWNENE	8	3S	5W	MADISON
23	10.00		NENENE	8	3S	5W	MADISON
24	9.00		SWNENE	8	3S	5W	MADISON
25	10.00		SENESE	8	3S	5W	MADISON
26	8.00		NWSENE	8	3S	5W	MADISON
27	10.00		NESENE	8	3S	5W	MADISON
28	3.00		SWSENE	8	3S	5W	MADISON
29	5.00		SESENE	8	3S	5W	MADISON
30	3.00		NWSESW	4	3S	5W	MADISON
31	8.00		NESESW	4	3S	5W	MADISON
32	8.00		NWSWSE	4	3S	5W	MADISON
33	2.00		NESWSE	4	3S	5W	MADISON
34	4.00		SWSESW	4	3S	5W	MADISON
35	10.00		SESESW	4	3S	5W	MADISON
36	10.00		SWSWSE	4	3S	5W	MADISON
37	2.00		SESWSE	4	3S	5W	MADISON
Total:	<u>292.00</u>						

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.