

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

\*\*\*\*\*

CLAIMANT: LF LTD Partnership

**CASE 41G-0610-R-2023**  
41G 197129-00

NOTICE OF INTENT TO APPEAR: City of Three  
Forks

**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 197129-00 appeared in the Basin 41G Preliminary Decree with a DNRC issue remark. It received a Notice of Intent to Appear from the City of Three Forks.

2. The issue remark appearing on claim 41G 197129-00 states:

THIS CLAIM REPRESENTS ISSUES OF FACT WHICH WERE PREVIOUSLY SUSTAINED BY THE WATER COURT. THE POINT OF DIVERSION APPEARS TO BE LOCATED IN THE SESWNW SEC 27 TWP 02N R 01E.

3. The issue remark was added to the claim during claim reexamination. Under Water Court orders, the DNRC was not authorized to modify elements of claims that were previously litigated during water court proceedings; instead, they were instructed to add an issue remark like the one above.

4. Claim 41G 197129-00 was the subject of a Master's Report in Case 41G-235 issued December 22, 1992. The Master's Report recommended that no changes be made to the claim, meaning the point of diversion remained as claimed in the W2NWSW of Section 27, T2N, R1E.

5. The claimants were ordered to meet with the DNRC in an informal attempt to resolve the issue remark. On April 17, 2024, the DNRC filed a Memorandum indicating that the claimant did not contact the DNRC by the deadline and the DNRC was unable to make a recommendation for issue remark resolution. In the memo, DNRC indicated that the place of use for the claim appears to be owned by Edna Price.

6. On April 29, 2024, an Order was issued providing notice to Edna Price of her potential ownership interest in claim 41G 197129-00. The Order states that because no evidence has been presented that overcomes the prima facie status of the claim, it appears that the legal land description for the point of diversion should remain unchanged (W2NWSW, Section 27, 2N, 1E) and the issue remark should be removed from the claim abstract. The parties, including NOIA party the City of Three Forks, were ordered to comment on the proposed issue remark resolution by May 29, 2024. The Order stated that if nothing was filed by the deadline, the Court would conclude that the parties agree that

the issue remark should be removed without any changes made to the elements of the claims. Nothing was filed by the deadline. The issue remark appearing on claim 41G 197129-00 should be removed; no changes should be made to the elements of the claim.

### CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water 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 provides a sufficient basis to do so. § 85-2-248(3), MCA.

3. 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 factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. If it meets this standard, then the burden of proof shifts to the claimant to prove his or her claim's validity. An issue remark is weighed like any other evidence. When an issue remark is placed on a claim, "the information resulting in the issue remark and the issue remark *must be weighed against* the claimed water right." § 85-2-247(2), MCA (emphasis added). The Water Court shall review an issue remark "to determine if information in the claim file or information obtained by the court provides a sufficient basis to resolve the identified issue remark or to determine if the issue remark can be corrected as a clerical error." § 85-2-248(3), MCA. Determining whether the factual issues raised by an issue remark have been resolved requires the exercise of judicial discretion.

*Id.*

The information resulting in the issue remark on claim 41G 197129-00 is not sufficient to overcome the prima facie status of the claim. The issue remark should be removed.

### RECOMMENDATIONS

1. The issue remark should be removed from claim 41G 197129-00.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

### **ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service via USPS Mail:**

LF LTD Partnership  
PO Box 1008  
Manhattan, MT 59741-1008

#### **Potential Owner:**

Edna M. Price  
712 S. 14<sup>th</sup> Ave.  
Bozeman, MT 59715

#### **Service via Electronic Mail:**

Dana E. Pepper  
Bina R. Peters  
River and Range Law, PLLC  
PO Box 477  
Bozeman, MT 59771  
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office@riverandrangelaw.com  
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\\JUDHLNSRV-DATA\Share\JUDGALH2OSRV (Datavol)\Share\WC-BASIN FOLDERS\41G PD\CASES\41G-R610\MW 41G-0610-R-2023 MR 6-12-2024 rr.docx

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

**Water Right Number:** 41G 197129-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** LF LTD PARTNERSHIP  
PO BOX 1008  
MANHATTAN, MT 59741-1008

**Priority Date:** MAY 15, 1884

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 224.00 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:** 20.00

**Source Name:** JEFFERSON RIVER

**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		W2NWSW	27	2N	1E	GALLATIN

**Period of Diversion:** MAY 1 TO SEPTEMBER 30

**Diversion Means:** DIKE

**Period of Use:** MAY 1 TO SEPTEMBER 30

**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	20.00		NWSW	27	2N	1E	GALLATIN
<b>Total:</b>	20.00						