

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

FILED
06/24/2024
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41G-0612-R-2024
Weisz, Madeleine
4.00

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

CLAIMANTS: Vicky Purser; Robert R. Lancaster;
Gary J. Lancaster; Adilene Haderli;
Katy Johnson; Jenny Pogliano; Rose
Riley; Christine Trostle

CASE 41G-0612-R-2024
41G 15360-00

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 15360-00 appeared in the Basin 41G Preliminary Decree. Claim 41G 15360-00 is an irrigation water right from a spring. During claim examination, claim 41G 15360-00 received the following issue remark:

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 120.3 TIMES THE CAPACITY OF THE RESERVOIR.

2. The Claimant was ordered to meet with the DNRC in an informal attempt to resolve the issue remark. The DNRC was ordered to file a memorandum making recommendations for issue remark resolution. On April 9, 2024, the DNRC filed a Memorandum with the Court. The DNRC indicates that the onstream reservoir associated with the right, known as Pagliano Reservoir, has a relatively small capacity (2.66 AF) compared to the water use. Because of this, the claim appears to be a direct flow irrigation water right. When a water right is primarily a direct flow system, the right should be quantified by flow rate rather than volume.

3. No flow rate was claimed when the statement of claim was filed. A reasonable flow rate can be calculated using the DNRC 17 gpm/acre guideline. Claim 41G 15360-00 has an 80-acre place of use. 80 acres times 17 gpm is equal to 1360 gpm, or 3.03 cfs. Accordingly, it appears that claim 41G 15360-00 should be decreed with a 3.03 cfs flow rate.

4. The claimants were provided a final opportunity to comment on the proposed modifications to claim 41G 15360-00. The claimants were informed that if nothing was filed by the deadline the Court would conclude that the claimants agreed with the proposed issue remark resolution of replacing the volume with a standard information remark and quantifying the claim by a flow rate of 3.03 cfs. Nothing was filed by the deadline. The flow rate should be decreed as 3.03 cfs. The volume quantification will be removed, and an information remark will be added stating it is a primarily a direct flow system and the volume is not decreed. The issue remark concerning volume should be removed from claim 41G 15360-00.

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 15360-00: modify the claim to reflect that it is primarily a direct flow system; replace the volume quantification with a flow rate; and remove the volume issue remark.

RECOMMENDATIONS

1. Claim 41G 15360-00 should be modified as provided above.
2. The issue remark should be removed from 41G 15360-00.

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:

Vicky Purser
32 N 100 W
Blackfoot, ID 83221

Robert R. Lancaster
Gary J. Lancaster
PO Box 39
Twin Bridges, MT 59754-0039

Adilene Haderli
PO Box 39
Twin Bridges, MT 59754

Katy Johnson
PO Box 39
Twin Bridges, MT 59754-0039

Jenny Pogliano
PO Box 39
Twin Bridges, MT 59754

Rose Riley
PO Box 39
Twin Bridges, MT 59754

Christine Trostle
PO Box 39
Twin Bridges, MT 59754

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

Water Right Number: 41G 15360-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: ADILENE HADERLI
PO BOX 39
TWIN BRIDGES, MT 59754

KATY JOHNSON
PO BOX 39
TWIN BRIDGES, MT 59754-0039

GARY J LANCASTER
PO BOX 39
TWIN BRIDGES, MT 59754-0039

ROBERT R LANCASTER
PO BOX 39
TWIN BRIDGES, MT 59754-0039

JENNY POGLIANO
PO BOX 39
TWIN BRIDGES, MT 59754

VICKY PURSER
32 N 100 W
BLACKFOOT, ID 83221

ROSE RILEY
PO BOX 39
TWIN BRIDGES, MT 59754

CHRISTINE TROSTLE
PO BOX 39
TWIN BRIDGES, MT 59754

Priority Date: MAY 1, 1920
Type of Historical Right: USE
Purpose (Use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: 3.03 CFS
Volume: PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.
Climatic Area: 4 - MODERATELY LOW
Maximum Acres: 80.00
Source Name: SPRING, UNNAMED TRIBUTARY OF JEFFERSON RIVER
Source Type: GROUNDWATER

ALSO KNOWN AS POGLIANO SPRING

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		SWSENE	6	3S	5W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Reservoir: ONSTREAM **Reservoir Name:** POGLIANO RESERVOIR

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSENE	6	3S	5W	MADISON

Diversion to Reservoir: DIVERSION # 1

Dam Height: 11.00 FEET

Depth: 8.00 FEET

Surface Area: 0.83 ACRES

Capacity: 2.66 ACRE-FEET

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	80.00		N2	6	3S	5W	MADISON

Total: 80.00