

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

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CLAIMANT: Sidney N. Herman Revocable Trust

OBJECTOR: Sidney N. Herman Revocable Trust

**CASE 41G-0577-R-2023**

41G 194552-00  
41G 197190-00  
41G 197191-00  
41G 197196-00  
41G 197197-00  
41G 197199-00  
41G 197200-00

**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. Claims 41G 194552-00, 41G 197190-00, 41G 197191-00, 41G 197196-00, 41G 197197-00, 41G 197199-00, and 41G 197200-00 are owned by Sidney N. Herman Revocable Trust (the Trust). William F. Ward Jr. filed objections to claims 41G 194552-00, 41G 197190-00, and 41G 197191-00. The Trust moved to be substituted for William Ward as the objector because it is the successor in interest to William Ward. The motion was granted.

2. On July 13, 2023, the Trust filed evidence and a Motion to Resolve the Objections and DNRC Issue Remarks. The filing did not include sufficient evidence to support the requested modifications to the period of diversion and period of use for claims 41G 197190-00 and 41G 197191-00. A filing deadline was set to give the Trust an opportunity to file additional evidence.

On November 27, 2023, the Trust filed a status report indicating that it will not pursue the amendments to the period of diversion and period of use for claims 41G 197190-00 and 41G 197191-00 and that it withdraws its objections to those claims. In its July 13, 2023 filing, the Trust withdrew its objection to claim 41G 194552-00.

Accordingly, the objections to claims 41G 194552-00, 41G 197190-00, 41G 197191-00 are withdrawn and should be considered resolved.

Claims 41G 197190-00 and 41G 197191-00 each received an issue remark stating the point of diversion and/or ditch name were modified during DNRC review. These issue remarks are considered notice issue remarks. The remarks have provided the necessary notice and no further proceedings are required. The issue remarks should be removed from claims 41G 197190-00 and 41G 197191-00.

3. Claims 41G 197196-00, 41G 197197-00, 41G 197199-00, and 41G 197200-00 each received the following issue remark:

THE SOURCE TYPE APPEARS INCORRECT. IT APPEARS THAT THE CORRECT SOURCE TYPE IS SURFACE WATER.

In its July 13, 2023, filing, the Trust indicates it agrees with the issue remark and requests that the source type for each of the claims be corrected from “groundwater” to “surface water.”

The Trust explains that developed springs are considered groundwater, while undeveloped springs are considered surface water. The Trust asserts the springs claimed by 41G 197196-00, 41G 197197-00, 41G 197199-00, and 41G 197200-00 are undeveloped. In support, the Trust attached the Affidavit of Kelin Bond.

The Trust provided sufficient explanation and evidence to support amending the source type for claims 41G 197196-00, 41G 197197-00, 41G 197199-00, and 41G 197200-00 from groundwater to surface water. The issue remarks have been addressed and should be removed.

#### 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.

The claimant provided sufficient evidence to establish that claims 41G 197196-00, 41G 197197-00, 41G 197199-00, and 41G 197200-00 should be identified as surface water rights rather than groundwater rights.

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.

The issue remarks appearing on claims 41G 197190-00 and 41G 197191-00 are notice issue remarks. They do not overcome the prima facie status of the claim. The remarks have served their purpose of providing notice and should be removed.

The claimant agrees with the issue remarks appearing on claims 41G 197196-00, 41G 197197-00, 41G 197199-00, and 41G 197200-00 and agrees that the source type should be modified to surface water. The issue remarks have been addressed and should be removed.

### RECOMMENDATIONS

1. Claims 41G 197196-00, 41G 197197-00, 41G 197199-00, and 41G 197200-00 should be modified as provided above.

2. The issue remarks should be removed from the claims in this case.

Post Decree Abstract 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.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

### *Service via Electronic Mail:*

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

**Water Right Number:** 41G 194552-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** HERMAN SIDNEY N REVOCABLE TRUST  
SIDNEY N HERMAN TRUSTEE  
3800 N LAKE SHORE DR APT 15B  
CHICAGO, IL 60613

**Priority Date:** DECEMBER 31, 1900

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** 0.69 GPM

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** GROUNDWATER

**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		NWNWNE	18	1S	1E	GALLATIN

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

**Diversion Means:** WELL

**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			NWNWNE	18	1S	1E	GALLATIN
2			SWNWNE	18	1S	1E	GALLATIN
3			NENWNE	18	1S	1E	GALLATIN
4			NWNWNE	18	1S	1E	GALLATIN

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

**Water Right Number:** 41G 197190-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** HERMAN SIDNEY N REVOCABLE TRUST  
SIDNEY N HERMAN TRUSTEE  
3800 N LAKE SHORE DR APT 15B  
CHICAGO, IL 60613

**Priority Date:** DECEMBER 31, 1882

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** 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:** 131.70

**Source Name:** WILLOW CREEK

**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		SWSENE	24	1S	1W	MADISON

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

**Diversion Means:** HEADGATE

**Ditch Name:** HARDWOOD DITCH NO. 2

2		SWSENE	24	1S	1W	MADISON
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**Period of Diversion:** MAY 1 TO SEPTEMBER 30

**Diversion Means:** HEADGATE

**Ditch Name:** HARWOOD DITCH NO. 1

**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	87.70		W2	18	1S	1E	GALLATIN
2	29.00		NW	19	1S	1E	GALLATIN
3	2.00		E2E2SESE	13	1S	1W	GALLATIN
4	13.00		E2E2NE	24	1S	1W	MADISON

**Total:** 131.70

**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.

197190-00

197191-00

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

**Water Right Number:** 41G 197191-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** HERMAN SIDNEY N REVOCABLE TRUST  
SIDNEY N HERMAN TRUSTEE  
3800 N LAKE SHORE DR APT 15B  
CHICAGO, IL 60613

**Priority Date:** DECEMBER 31, 1865

**Type of Historical Right:** DECREED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**\*Flow Rate:** 1.88 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:** 131.70

**Source Name:** WILLOW CREEK

**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		SWSENE	24	1S	1W	MADISON

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

**Diversion Means:** HEADGATE

**Ditch Name:** HARDWOOD DITCH NO. 2

2		SWSENE	24	1S	1W	MADISON
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**Period of Diversion:** MAY 1 TO SEPTEMBER 30

**Diversion Means:** HEADGATE

**Ditch Name:** HARWOOD DITCH NO. 1

**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	87.70		W2	18	1S	1E	GALLATIN
2	29.00		NW	19	1S	1E	GALLATIN
3	2.00		E2E2SESE	13	1S	1W	GALLATIN
4	13.00		E2E2NE	24	1S	1W	MADISON

**Total:** 131.70

**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.

197190-00

197191-00

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

**Water Right Number:** 41G 197196-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** HERMAN SIDNEY N REVOCABLE TRUST  
SIDNEY N HERMAN TRUSTEE  
3800 N LAKE SHORE DR APT 15B  
CHICAGO, IL 60613

**\*Priority Date:** DECEMBER 31, 1920

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF WILLOW CREEK

**Source Type:** SURFACE WATER

ALSO KNOWN AS ORCHARD 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		SESE	30	1S	1E	MADISON

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**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				30	1S	1E	MADISON

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

**Water Right Number:** 41G 197197-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** HERMAN SIDNEY N REVOCABLE TRUST  
SIDNEY N HERMAN TRUSTEE  
3800 N LAKE SHORE DR APT 15B  
CHICAGO, IL 60613

**\*Priority Date:** DECEMBER 31, 1920

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF WILLOW CREEK

**Source Type:** SURFACE WATER

ALSO KNOWN AS GARNETT 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		SESESE	18	1S	1E	GALLATIN

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**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				18	1S	1E	GALLATIN

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

**Water Right Number:** 41G 197199-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** HERMAN SIDNEY N REVOCABLE TRUST  
SIDNEY N HERMAN TRUSTEE  
3800 N LAKE SHORE DR APT 15B  
CHICAGO, IL 60613

**\*Priority Date:** DECEMBER 31, 1920

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF WILLOW CREEK

**Source Type:** SURFACE WATER

ALSO KNOWN AS COTTONWOOD 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		SWSW	19	1S	1E	GALLATIN

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**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				19	1S	1E	GALLATIN

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

**Water Right Number:** 41G 197200-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** HERMAN SIDNEY N REVOCABLE TRUST  
SIDNEY N HERMAN TRUSTEE  
3800 N LAKE SHORE DR APT 15B  
CHICAGO, IL 60613

**\*Priority Date:** DECEMBER 31, 1920

**Type of Historical Right:** USE

**Purpose (Use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** SPRING, UNNAMED TRIBUTARY OF SPRING CREEK

**Source Type:** SURFACE WATER  
ALSO KNOWN AS HILL 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		NWNWNW	23	1S	1W	MADISON

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

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**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			NWNWNW	23	1S	1W	MADISON