

Montana Water Court  
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**FILED**  
08/15/2024  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
41E-0234-R-2024  
Ostrem, Eyvind  
6.00

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
BOULDER RIVER—TRIBUTARY OF THE JEFFERSON RIVER (BASIN 41E)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANTS: Barbara Kyler; Lattin Family Trust; NR & EJ  
Limited Partnership; Rocking A Ranch LLC;  
Kenneth Stringer Trust Agreement

**CASE 41E-0234-R-2024**  
41E 94025-00  
41E 94026-00

**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 to 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**

The water right claims listed above appeared in the Preliminary Decree for the Boulder River, Tributary of Jefferson River (Basin 41E) issued on October 19, 2022. Each claim received issue remarks from the Department of Natural Resources and

Conservation (“DNRC”) raising potential legal or factual issues with the claim. The Water Court consolidated the claims into case 41E-0234-R-2024 to address these issues.

The Court ordered the Claimants to work with the DNRC to resolve the issue remarks on the claims. The Claimants met with DNRC and DNRC Water Resource Specialist Jason Larsen filed a Memorandum with the Court on April 25, 2024 (“DNRC Memo”). Doc. 3.00.<sup>1</sup> The DNRC Memo made recommendations as to how to resolve the issue remarks based on DNRC’s discussion with the Claimants and review of the claim abstracts, claim files, aerial photos, and a site visit to get GPS coordinates.

Claimant NR & EJ Limited Partnership filed its Endorsement of DNRC Memo, agreeing with the DNRC’s recommendations on May 14, 2024. Doc. 4.00. The Court ordered the remaining claimants to review the DNRC Memo and inform the Court if they disagreed with the recommendations. The Court informed the Claimants that if nothing were filed, the Court would conclude the Claimants agree with the DNRC recommendations. Nothing was filed by the deadline.

#### FINDINGS OF FACT

1. Water right claims 41E 94025-00 and 41E 94026-00 appeared in the Preliminary Decree with the following substantive issue remark:

THE POINT OF DIVERSION NO. 1 APPEARS TO BE INCORRECT. THE POINT OF DIVERSION NO. 1 APPEARS TO BE NWNESE SEC 15 TWP 6N RGE 4W JEFFERSON COUNTY.

Each claim’s point of diversion No. 1 should be corrected as follows as recommended by the DNRC Memo:

#### **Point of Diversion ID No. 1:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2	SE	SENE	15	6N	4W JEFFERSON

2. The claims also received the following issue remarks that served only to provide notice to the Claimants and other water users in the Preliminary Decree (Notice Only Remarks):

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<sup>1</sup> “Doc.” refers to the docket number of a document filed in the Water Court’s Full Court Enterprise Case Management system.

41E 94025-00:

DITCH NAME 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.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON MUSKRAT CREEK WITH A PRIORITY DATE PREDATING CASE NO 1249, JEFFERSON COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

41E 94026-00:

DITCH NAME 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.

#### PRINCIPLES OF LAW

1. 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 provide a sufficient basis to do so. § 85-2-248(3), MCA.

2. 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.

#### CONCLUSIONS OF LAW

1. The Findings of Fact above are supported by a preponderance of the evidence. The claims should be modified as described above. The substantive issue remarks are resolved by the modifications described above. The Notice Only Remarks have served their notice purpose. The issue remarks should be removed from the claims.

#### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact above and remove the issue remarks from the claims.

A Post Decree Abstract of Water Right Claim for each claim reflecting the recommended changes is attached to this Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Barbara Kyler  
125 Waldron Dr  
Butte, MT 59701

Lattin Family Trust  
PO Box 105  
Boulder, MT 59632

Rocking A Ranch LLC  
PO Box 49  
Boulder, MT 59632

Kenneth Stringer Trust Agreement  
Kenneth T. Stringer Trustee  
PO Box 698  
Boulder, MT 59632

**Service Via Electronic Mail:**

W. John Tietz  
Hallee C. Frandsen  
Browning Kaleczyc Berry & Hoven PC  
PO Box 1697  
Helena, MT 59624-1697  
(406) 443-6820  
john@bkbh.com  
hallee@bkbh.com  
megan@bkbh.com

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER**  
**BASIN 41E**

**Water Right Number:** 41E 94025-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**

BARBARA KYLER  
C/O LARRY LATTIN  
PO BOX 105  
BOULDER, MT 59632

ROCKING A RANCH LLC  
PO BOX 49  
BOULDER, MT 59632-0049

LATTIN FAMILY TRUST  
PO BOX 105  
BOULDER, MT 59632-0105

NR & EJ LIMITED PARTNERSHIP  
PO BOX 1715  
33 LAST CHANCE GULCH  
HELENA, MT 59624

STRINGER, KENNETH TRUST AGREEMENT  
KENNETH T STRINGER TRUSTEE  
PO BOX 698  
BOULDER, MT 59632-0698

**Priority Date:** JULY 16, 1900

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 3.75 CFS

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**\*Maximum Acres:** 1,248.00

**Source Name:** MUSKRAT 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		S2SENE	15	6N	4W	JEFFERSON

**Period of Diversion:** MAY 15 TO OCTOBER 31

**Diversion Means:** HEADGATE

**Ditch Name:** SLOAN DITCH

2	SWSENE	11	6N	4W	JEFFERSON
<b>Period of Diversion:</b> MAY 15 TO OCTOBER 31					
<b>Diversion Means:</b> HEADGATE					
<b>Ditch Name:</b> ANDREWS DITCH(NOW BANNOCK TRADING CO)					
3	NWNESE	11	6N	4W	JEFFERSON
<b>Period of Diversion:</b> MAY 15 TO OCTOBER 31					
<b>Diversion Means:</b> HEADGATE					
<b>Ditch Name:</b> PATTERSON DITCH					
4	NWSESW	11	6N	4W	JEFFERSON
<b>Period of Diversion:</b> MAY 15 TO OCTOBER 31					
<b>Diversion Means:</b> HEADGATE					
5	SEWNNE	22	6N	4W	JEFFERSON
<b>Period of Diversion:</b> MAY 15 TO OCTOBER 31					
<b>Diversion Means:</b> HEADGATE					
6	SESESW	22	6N	4W	JEFFERSON
<b>Period of Diversion:</b> MAY 15 TO OCTOBER 31					
<b>Diversion Means:</b> HEADGATE					
<b>Ditch Name:</b> RIEDER DITCH					

DITCH NAME FOR POINT OF DIVERSION NO. 2 IS ALSO KNOWN AS WARREN DITCH.

**Period of Use:** MAY 15 TO OCTOBER 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	35.00		S2S2NE	10	6N	4W	JEFFERSON
2	11.00		SWSW	10	6N	4W	JEFFERSON
3	59.00		E2SW	10	6N	4W	JEFFERSON
4	160.00		SE	10	6N	4W	JEFFERSON
5	12.00		S2SENE	11	6N	4W	JEFFERSON
6	10.00		W2NESE	11	6N	4W	JEFFERSON
7	35.00		W2SE	11	6N	4W	JEFFERSON
8	17.00		S2NESW	11	6N	4W	JEFFERSON
9	24.00		SESW	11	6N	4W	JEFFERSON
10	74.00		W2SW	11	6N	4W	JEFFERSON
11	22.00		W2NW	14	6N	4W	JEFFERSON
12	2.00		NWNWSW	14	6N	4W	JEFFERSON
13	300.00		E2	15	6N	4W	JEFFERSON
14	122.00		NE	22	6N	4W	JEFFERSON
15	80.00		E2NW	22	6N	4W	JEFFERSON
16	40.00		NESW	22	6N	4W	JEFFERSON
17	40.00		NWSE	22	6N	4W	JEFFERSON
18	25.00		W2E2SE	22	6N	4W	JEFFERSON
19	110.00		E2	27	6N	4W	JEFFERSON
20	70.00		N2SE	27	6N	4W	JEFFERSON
<b>Total:</b>	<b>1248.00</b>						

**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.

94024-00	94025-00	94026-00	94027-00	94028-00	94029-00
94030-00	94031-00	94032-00	94033-00	94034-00	94035-00
210886-00	210887-00	210888-00	210889-00	210890-00	210891-00
214261-00					

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER**  
**BASIN 41E**

**Water Right Number:** 41E 94026-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**

BARBARA KYLER  
C/O LARRY LATTIN  
PO BOX 105  
BOULDER, MT 59632

ROCKING A RANCH LLC  
PO BOX 49  
BOULDER, MT 59632-0049

LATTIN FAMILY TRUST  
PO BOX 105  
BOULDER, MT 59632-0105

NR & EJ LIMITED PARTNERSHIP  
PO BOX 1715  
33 LAST CHANCE GULCH  
HELENA, MT 59624

STRINGER, KENNETH TRUST AGREEMENT  
KENNETH T STRINGER TRUSTEE  
PO BOX 698  
BOULDER, MT 59632-0698

**Priority Date:** MAY 1, 1905

**Type of Historical Right:** USE

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 5.25 CFS

**\*Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**\*Maximum Acres:** 983.00

**Source Name:** MUSKRAT 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		S2SENE	15	6N	4W	JEFFERSON

**Period of Diversion:** APRIL 15 TO SEPTEMBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** SLOAN DITCH



2	SWSENE	11	6N	4W	JEFFERSON
<b>Period of Diversion:</b> APRIL 15 TO SEPTEMBER 1					
<b>Diversion Means:</b> HEADGATE					
<b>Ditch Name:</b> ANDREWS DITCH(NOW BANNOCK TRADING CO)					
3	NWNESE	11	6N	4W	JEFFERSON
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<b>Diversion Means:</b> HEADGATE					
<b>Ditch Name:</b> PATTERSON DITCH					
4	NWSESW	11	6N	4W	JEFFERSON
<b>Period of Diversion:</b> APRIL 15 TO SEPTEMBER 1					
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<b>Period of Diversion:</b> APRIL 15 TO SEPTEMBER 1					
<b>Diversion Means:</b> HEADGATE					
6	SESESW	22	6N	4W	JEFFERSON
<b>Period of Diversion:</b> APRIL 15 TO SEPTEMBER 1					
<b>Diversion Means:</b> HEADGATE					
<b>Ditch Name:</b> RIEDER DITCH					

DITCH NAME FOR POINT OF DIVERSION NO. 2 IS ALSO KNOWN AS WARREN DITCH.

**Period of Use:** APRIL 15 TO SEPTEMBER 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	12.00		S2SENE	11	6N	4W	JEFFERSON
2	10.00		NWNESE	11	6N	4W	JEFFERSON
3	35.00		W2SE	11	6N	4W	JEFFERSON
4	17.00		S2NESW	11	6N	4W	JEFFERSON
5	24.00		SESW	11	6N	4W	JEFFERSON
6	74.00		W2SW	11	6N	4W	JEFFERSON
7	22.00		NWNW	14	6N	4W	JEFFERSON
8	2.00		NWNWSW	14	6N	4W	JEFFERSON
9	300.00		E2	15	6N	4W	JEFFERSON
10	122.00		NE	22	6N	4W	JEFFERSON
11	80.00		E2NW	22	6N	4W	JEFFERSON
12	40.00		NESW	22	6N	4W	JEFFERSON
13	40.00		NWSE	22	6N	4W	JEFFERSON
14	25.00		W2E2SE	22	6N	4W	JEFFERSON
15	110.00		NE	22	6N	4W	JEFFERSON
16	70.00		N2SE	22	6N	4W	JEFFERSON
<b>Total:</b>	<b>983.00</b>						

**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.

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94030-00	94031-00	94032-00	94033-00	94034-00	94035-00
210886-00	210887-00	210888-00	210889-00	210890-00	210891-00
214261-00					