

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

CLAIMANTS: Joanne Samson Family Trust; Sam Samson
Family Trust

CASE 41E-0249-R-2024
41E 94344-00

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

All water right claims that appeared in the Preliminary Decree for Boulder River (Basin 41E) were subject to “issue remarks” resulting from pre-decree examination by the DNRC, objections, and counterobjections. Claim 41E 94344-00 received an issue remark during the DNRC’s review of the claims.

The claim was consolidated into Case 41E-0249-R-2024 and an Order Requiring the Claimant to consult with the DNRC to resolve the issue remark was issued by the Water Court.

FINDINGS OF FACT

1. Claim 41E 94344-00 appeared in the Preliminary Decree with the following issue remarks:

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 12.8 TIMES THE CAPACITY OF THE RESERVOIR.

2. On May 20, 2024, DNRC Water Resources Specialist Jason Larsen filed a *Memorandum* in this matter. The *Memo* states that the DNRC was not contacted by claimant Joanne Samson Family Trust or Sam Samson Family Trust regarding the aforementioned issue remark. The *Memo* goes on to state that while it is possible the reservoir is part of a primarily direct flow system, the claimed volume appears to be high for an irrigation area of 3.0 acres. Therefore, the DNRC made the following recommendations regarding the disposition of the issue remark:

RECOMMENDATION(S):

Claim 41E 94344-00

Without any additional information from the claimant about the volume requirement of the irrigated acreage and/or the volume of water stored in the reservoir, the DNRC recommends that the volume be reduced to 2.5 times the storage capacity of the reservoir.

DNRC recommends removing the V40 issue remark.

3. On June 6, 2024, the Court set a filing deadline for claimants Joanne Samson Family Trust and Sam Samson Family Trust to file a statement if they disagreed with the above-listed recommendations from the DNRC to resolve the issue remark on claim 41E 94344-00. For reference, the proposed modification would reduce the volume of claim 41E 94344-00 from 16.00 acre-feet to 2.5 times the 1.12 acre-feet capacity of the reservoir equaling a volume of 2.80 acre-feet. Nothing was filed by the deadline. The Order Setting Filing Deadline included the following language:

ORDERED that the deadline is **July 5, 2024** for Joanne Samson Family Trust and Sam Samson Family Trust to file a written response to the DNRC recommendations *if they disagree with these recommendations*. If no written response is filed by July 5, 2024, the Court will conclude that Joanne Samson Family Trust and Sam Samson Family Trust agree with the DNRC recommendations.

4. Claim 41E 94344-00 also received a notice-type issue remark from the DNRC denoting modifications made by the DNRC during its claim reexamination. No objections were filed.

PRINCIPLES OF LAW

1. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

2. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

3. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

4. Sanctions applied against a claimant may include modification of a claim to conform with data provided by the DNRC, information obtained by the Court, or information included in an objection, or the entry of default and termination of a water right claim. Rule 11, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The information in the record is sufficient to resolve the volume issue remark appearing on claim 41E 94344-00. Based on the information contained Mr. Larsen's *Memo*, coupled with the lack of response from claimants Joanne Samson Family Trust and Sam Samson Family Trust the volume element for claim 41E 94344-00 should be modified from 16.00 acre-feet to 2.80 acre-feet per Rule 22, W.R.Adj.R., and the volume issue remark should be removed from the claim.

2. The notice-type issue remark appearing on claim 41E 94344-00 served its notice purpose and should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusion of Law, this Water Master recommends that the Court modify claim 41E 94344-00 as described in Conclusion of Law No. 1 and remove the issue remarks from the claim.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Joanne Samson Family Trust
Josephine Samson Trustee
Sam Samson Family Trust
Ottocar Samson Trustee
PO Box 358
Boulder, MT 59632

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

Water Right Number: 41E 94344-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SAMSON, JOANNE FAMILY TRUST
JOSEPHINE SAMSON TRUSTEE
PO BOX 358
BOULDER, MT 59632-0358

SAMSON, SAM FAMILY TRUST
OTTOCAR SAMSON TRUSTEE
PO BOX 358
BOULDER, MT 59632-0358

Priority Date: MAY 31, 1897

Type of Historical Right: USE

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

Volume: 2.80 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 3.00

Source Name: SPRING, UNNAMED TRIBUTARY OF BROWNS GULCH

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		NENENE	2	5N	4W	JEFFERSON

***Period of Diversion:** MAY 15 TO SEPTEMBER 15

Diversion Means: HEADGATE

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENENE	2	5N	4W	JEFFERSON

Diversion to Reservoir: DIVERSION # 1

Depth: 10.00 FEET

Surface Area: 0.28 ACRES

Capacity: 1.12 ACRE-FEET

Period of Use: MAY 15 TO SEPTEMBER 15

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>
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1	<u>3.00</u>	NENENE	2	5N	4W	JEFFERSON
Total:	3.00					

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.

94344-00

94345-00