

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

CLAIMANT: Free Enterprise Radon Health Mine LLC

CASE 41E-0275-R-2024

41E 143113-00

OBJECTOR: United States of America (Bureau of Land Management)

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, conclusion 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 mail 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 United States of America (Bureau of Land Management) objected to this claim. This claim appeared in the Preliminary Decree with the following issue remarks:

THE VOLUME IS MISSING.

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

Free Enterprise Radon Health Mine LLC [“claimant”] did not appear at the March 5, 2024 scheduling conference as directed in the February 13, 2024 Order Consolidating Case And Setting Scheduling Conference. The default of the claimant was entered in the March 5, 2024 Court Minutes, Order Entering Default, and Order Setting Filing Deadline. On September 9, 2024 the United States’ Motion For A Show Cause Order [“Motion”] was filed including its requested changes to the claim. The October 1, 2024 Order Setting Show Cause Filing Deadline states:

ORDERED that the deadline is **November 1, 2024** for Free Enterprise Radon Health Mine LLC to file a written statement showing cause why claim 41E 143113-00 should not be modified as detailed in the Motion. If nothing is filed by Free Enterprise Radon Health Mine LLC by this deadline, the Court will conclude it agrees the claim should be modified as described in the Motion.

(Emphasis in original) Nothing was filed by the claimant. The referenced documents are viewable in the Court’s FullCourt Enterprise case management system.

APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 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 including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Preliminary Decree does not include a volume. The following standard volume remark for mining claims should be added: THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES. The volume issue remark should be removed as addressed and resolved.

2. The Preliminary Decree includes an offstream reservoir. The reservoir should be removed from the abstract of claim. The reservoir issue remark should be removed as addressed and resolved.

3. The Preliminary Decree includes the following means of diversion clarification remark: THE MEANS OF DIVERSION IS A PIPELINE. The remark text should be changed to: THE MEANS OF DIVERSION INCLUDES A PIPELINE AND CISTERN.

4. The Preliminary Decree states that the place of use legal description is the SE section 19, T6N, R4W, JEFFERSON. The legal description should be the NWSE section 19, T6N, R4W, JEFFERSON.

5. As requested, the following general remark should be added to the abstract of claim: THE POINT OF DIVERSION AND PLACE OF USE ARE LIMITED TO PRIVATE LAND.

6. The Preliminary Decree also includes the following notice remarks:

WHEN THIS CLAIM WAS ORIGINALLY DECREED, THE PERIOD OF DIVERSION WAS NOT INCLUDED AS AN ELEMENT OF THE CLAIM. IN 2008, THE PERIOD OF DIVERSION ELEMENT WAS ADDED TO ALL CLAIM ABSTRACTS. IT IS NOT CERTAIN IF THE PERIOD OF DIVERSION DATES ADDED TO THIS CLAIM ACCURATELY REFLECT THE HISTORICAL PERIOD OF DIVERSION. MORE INFORMATION IS REQUIRED.

POINT OF DIVERSION 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 remarks provide notice of these changes made prior to issuance of the Preliminary Decree and do not raise unresolved issues which need to be addressed. The remarks should be removed as having served their notice purposes.

CONCLUSION OF LAW

The Motion is sufficient to contradict and overcome the prima facie claim and to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to

confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Free Enterprise Radon Health Mine LLC
PO Box 67
Boulder, MT 59632

Service Via Electronic Mail:

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

Water Right Number: 41E 143113-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: FREE ENTERPRISE RADON HEALTH MINE LLC
PO BOX 67
BOULDER, MT 59632-0067

Priority Date: JULY 15, 1952

Type of Historical Right: FILED

Purpose (Use): MINING

***Flow Rate:** 200.00 GPM

Volume: THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

Source Name: GROUNDWATER

Source Type: GROUNDWATER

GROUNDWATER FROM UNDERGROUND MINE SHAFT

***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		NWSE	19	6N	4W	JEFFERSON

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

Diversion Means: WELL

THE MEANS OF DIVERSION INCLUDES A PIPELINE AND CISTERN.

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			NWSE	19	6N	4W	JEFFERSON

Remarks:

THE POINT OF DIVERSION AND PLACE OF USE ARE LIMITED TO PRIVATE LAND.