

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: Buster Bullock; Megan F. Bullock

CASE 41E-0227-R-2024
41E 94271-00

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, 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

Claim 41E 94271-00 appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

The issue remarks were not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence.

The February 6, 2024 Order Consolidating Case and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA set filing deadlines for the Montana Department of Natural Resources and Conservation [“DNRC”] and the claimants. On March 11, 2024 the DNRC Memorandum was filed providing recommendations based on discussions with the claimants. Nothing was filed by the claimants. The May 15, 2024 Order Setting Filing Deadline Pursuant To 85-2-248, MCA states:

If the claimants agree with the recommendations, they do not need to file anything. If the claimants disagree with the recommendations, a written response must be filed stating the items of disagreement. Therefore, it is ORDERED that the deadline is **June 17, 2024** for Buster Bullock and Megan F. Bullock to file a written response to the DNRC recommendations *if they disagree with these recommendations*. If no written response is filed by June 17, 2024, the Court will conclude that Buster Bullock and Megan F. Bullock agree with the DNRC recommendations.

Nothing was filed by the claimants. These 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 states that the point of diversion legal description is the NWNWSE section 10, T5N, R3W, JEFFERSON. The legal description should be SESENW section 10, T5N, R3W, JEFFERSON. The point of diversion issue remark should be removed as addressed and resolved.

2. The Preliminary Decree also includes the following notice remark:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 41E 94271-00, 41E 110739-00, 41E 110740-00, 41E 110741-00, 41E 110742-00, 41E 110743-00.

This remark does not raise unresolved issues which need to be addressed. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The information provided by the DNRC and the claimants is sufficient to resolve the issue remark 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:

Buster Bullock
Megan F. Bullock
PO Box 364
Boulder, MT 59632

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

Water Right Number: 41E 94271-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BUSTER BULLOCK
PO BOX 364
BOULDER, MT 59632-0364

MEGAN F BULLOCK
PO BOX 364
BOULDER, MT 59632-0364

Priority Date: APRIL 1, 1880

Type of Historical Right: DECREED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 1.25 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: 470.00

Source Name: ELKHORN 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		SESENW	10	5N	3W	JEFFERSON

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO OCTOBER 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	300.00		S2	22	5N	3W	JEFFERSON
2	80.00		S2NE	22	5N	3W	JEFFERSON
3	40.00		S2N2NE	22	5N	3W	JEFFERSON
4	30.00		SWSE	21	5N	3W	JEFFERSON
5	20.00		SESW	21	5N	3W	JEFFERSON

Total: 470.00