

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: L R Huckaba Ranch Inc.

CASE 41E-6003-A-2024

41E 3406-00

41E 3407-00

41E 3408-00

ORDER ON MOTION TO AMEND

On June 18, 2024, Claimant L R Huckaba Ranch Inc. (“Huckaba”) filed a Verified Motion to Amend Water Right Claim. The motion asks the court to modify the places of use for claims 41E 3406-00, 41E 3407-00, and 41E 3408-00. The Water Court opens this case to address the motion. For the reasons set forth below, the Court grants the motion.

BACKGROUND

The Water Court included claims 41E 3406-00, 41E 3407-00, and 41E 3408-00 in the Preliminary Decree for the Boulder River Basin (Basin 41E), issued on October 19, 2022. The Preliminary Decree describes the claims as filed rights to irrigate a 300 acre place of use. The decree abstracts describe the places of use for all three claims as:

<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	70.00		E2	3	1N	3W	JEFFERSON
2	130.00		SW	2	1N	3W	JEFFERSON
3	<u>100.00</u>		NW	11	1N	3W	JEFFERSON
Total	300.00						

The claims did not receive any objections but did receive some notice-only issue remarks related to the standardization of the points of diversion, ditch names and source names. The Court consolidated the claims into case 41E-0061-R-2023, and resolved these remarks in a closing order issued on October 30, 2023. Neither the issue remarks nor the closing order addressed the place of use.

Huckaba’s motion asks the Court to modify the places of use by replacing them with the following:

<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	70.00		E2	3	1N	3W	JEFFERSON
2	123.20		SW	2	1N	3W	JEFFERSON
3	90.80		NW	11	1N	3W	JEFFERSON
4	6.80		SWSE	2	1N	3W	JEFFERSON
5	9.20		W2NE	11	1N	3W	JEFFERSON
Total	300.00						

Huckaba’s motion states that when compiling information in connection with a proposed change application, Huckaba discovered that the places of use were incorrectly described. The motion does not ask for any modifications to the flow rate, volume, or any other element of the claims. The motion also does not ask the Court to increase the maximum acres; rather, it only asks for fairly minor place of use modifications.

DISCUSSION

Motions to amend are authorized under § 85-2-233(6), MCA and Rule 10, W.R.Adj.R. When a party seeks to amend an element of their own water right, the party must provide sufficient evidence to prove by a preponderance of the evidence that the modification overcomes the prima facie status of the claims. Rule 19, W.R.Adj.R.; *Nelson v. Brooks*, 2014 MT 120, ¶ 34, 375 Mont. 86, 329 P.3d 558. Preponderance of evidence is a relatively modest standard. *DeBuff v. Mont. Dep't of Nat. Res. & Conservation*, 2021 MT 68, ¶ 38, 403 Mont. 403. If the Court determines the proposed modification may adversely affect other water users, the Court requires notice and the opportunity to object before approving the modification. Section 85-2-233(6), MCA.

The Water Use Act does not specifically preclude motions to amend at any particular point prior to issuance of a final decree. However motions to amend filed after

a claim has been included in a decree and closed without objections potentially pose problems because they ask for modifications to claims without preliminary decree safeguards such as notice and an objection process. Because this motion falls in the category of a post-decree motion to amend, it receives an especially careful review from the Court. As the Court previously has explained, post-decree motions run the risk of being disguised objections filed after the close of the objection period. *In re Brewer Ranch LLC*, 2023 Mont. Water LEXIS 393, *7 (“[i]f parties are allowed to use the motion to amend provisions to cure the failure to file a timely objection, the motion to amend provision would conflict with the objection provisions and cause the objection deadlines imposed by the legislature to become meaningless”). The Court also is wary of allowing motions to amend that seem to be efforts to avoid a change proceeding under § 85-2-402, MCA. However, if a motion identifies clerical-type errors, the Court may allow the motion. *In re Haven*, Case 42L-6003-A-2022, 2022 Mont. Water LEXIS 441; *In re Carol Nickelson Trust*, Case 43B-6005-A-2023, 2024 Mont. Water LEXIS 78.

The Court first examines the motion to determine whether it appears to be a disguised late objection. The nature of this motion indicates it is not. The motion indicates Huckaba discovered minor legal description errors during the process of preparing a change application and filed the motion to correct the errors. There is nothing to suggest Huckaba was aware of the discrepancies during the Basin 41E objection period. While it would have been helpful for Huckaba to explain why it did not address the issue by self-objecting during the objection period, the lack of a self-objection is not fatal to the motion under these facts.

The second question is whether additional notice should be required. The nature of this motion indicates it is unlikely the motion will result in a modified water use causing adverse effect to other water users. The place of use modifications are akin to a clerical correction to better refine the legal description for the same physical places of use described in the Preliminary Decree. As indicated in Exhibit A to the motion, Huckaba only asks the Court to recognize that 16 acres of the 300 acre place of use for the claims are in the eastern half rather than the western half of Sections 2 and 11. Otherwise the place of use covers the same land as was decreed. Huckaba does not seek an increase in

acreage, use water on different fields, or otherwise modify any other element of the claims. The modified place of use also does not indicate any increased burden on the source. The Court concludes the amendments will not adversely affect other water users, so no further notice is necessary.

Huckaba’s motion meets the standard for motions to amend. The evidence provided by Huckaba proves that revised place legal land descriptions more accurately describe what already describes what already has been decreed without affecting other water users.

ORDER

Therefore, it is ORDERED that Huckaba’s Verified Motion to Amend Water Right Claim is GRANTED. The places of use for claims 41E 3406-00, 41E 3407-00, and 41E 3408-00 are modified as requested. The Court also re-orders the place of use sequence to conform to accepted public land survey system protocols, as follows:

<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	123.20		SW	2	1N	3W	JEFFERSON
2	6.80		SWSE	2	1N	3W	JEFFERSON
3	70.00		E2	3	1N	3W	JEFFERSON
4	9.20		W2NE	11	1N	3W	JEFFERSON
5	90.80		NW	11	1N	3W	JEFFERSON
Total	300.00						

Post-decree abstract of the claims are included with this Order to confirm the amendments have been made in the State’s centralized water rights record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via USPS Mail:

L R Huckaba Ranch Inc.
26 MT Highway 359
Cardwell, MT 59721

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

Water Right Number: 41E 3406-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: L R HUCKABA RANCH INC
26 MT HIGHWAY 359
CARDWELL, MT 59721-9604

Priority Date: DECEMBER 31, 1868

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 11.37 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: 300.00

Source Name: COLD SPRINGS

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		SWSESW	6	2N	2W	JEFFERSON

Period of Diversion: APRIL 1 TO OCTOBER 30

Diversion Means: UNDEVELOPED SPRING

2 - SECONDARY		NWSESW	35	2N	3W	JEFFERSON
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Period of Diversion: APRIL 1 TO OCTOBER 30

Diversion Means: HEADGATE

Ditch Name: CARDWELL DITCH

3 - SECONDARY		NESWNE	3	1N	3W	JEFFERSON
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Period of Diversion: APRIL 1 TO OCTOBER 30

Diversion Means: HEADGATE

THE BOULDER RIVER AND JEFFERSON SLOUGH ARE USED AS NATURAL CARRIERS TO CONVEY COLD SPRINGS WATER TO SECONDARY DIVERSIONS IN SECTION 35, T2N, R3W AND SECTIONS 3 AND 11, T1N, R3W.

Period of Use: APRIL 1 TO OCTOBER 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	123.20		SW	2	1N	3W	JEFFERSON
2	6.80		SWSE	2	1N	3W	JEFFERSON
3	70.00		E2	3	1N	3W	JEFFERSON

4	9.20	W2NE	11	1N	3W	JEFFERSON
5	90.80	NW	11	1N	3W	JEFFERSON
Total:	<u>300.00</u>					

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.

3406-00 3407-00 3408-00

THIS APPROPRIATION OF WATER TAKES WATER FROM THE BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER DRAINAGE (BASIN 41E) AND USES IT IN THE JEFFERSON RIVER DRAINAGE (BASIN 41G) AND THE BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER DRAINAGE (BASIN 41E). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.

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

Water Right Number: 41E 3407-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: L R HUCKABA RANCH INC
26 MT HIGHWAY 359
CARDWELL, MT 59721-9604

Priority Date: DECEMBER 31, 1886

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 11.37 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: 300.00

Source Name: BOULDER RIVER

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		NWSENW	35	2N	3W	JEFFERSON

Period of Diversion: APRIL 1 TO OCTOBER 30

Diversion Means: HEADGATE

Ditch Name: CARDWELL DITCH

2 - SECONDARY		NESWNE	3	1N	3W	JEFFERSON
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Period of Diversion: APRIL 1 TO OCTOBER 30

Diversion Means: HEADGATE

WATER DIVERTED FROM BOULDER RIVER IS CONVEYED TO JEFFERSON SLOUGH WHICH IS USED AS A NATURAL CARRIER TO CONVEY WATER TO THE PLACE OF USE.

Period of Use: APRIL 1 TO OCTOBER 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	123.20		SW	2	1N	3W	JEFFERSON
2	6.80		SWSE	2	1N	3W	JEFFERSON
3	70.00		E2	3	1N	3W	JEFFERSON
4	9.20		W2NE	11	1N	3W	JEFFERSON
5	90.80		NW	11	1N	3W	JEFFERSON

Total: 300.00

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.

3406-00

3407-00

3408-00

THIS APPROPRIATION OF WATER TAKES WATER FROM THE BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER DRAINAGE (BASIN 41E) AND USES IT IN THE JEFFERSON RIVER DRAINAGE (BASIN 41G). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.

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

Water Right Number: 41E 3408-00 STATEMENT OF CLAIM
Version: 5 -- POST DECREE
Status: ACTIVE

Owners: L R HUCKABA RANCH INC
26 MT HIGHWAY 359
CARDWELL, MT 59721-9604

Priority Date: DECEMBER 31, 1888

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 11.37 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: 300.00

Source Name: BOULDER RIVER

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		NWSENW	35	2N	3W	JEFFERSON

Period of Diversion: APRIL 1 TO OCTOBER 30

Diversion Means: HEADGATE

Ditch Name: CARDWELL DITCH

2 - SECONDARY		NESWNE	3	1N	3W	JEFFERSON
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Period of Diversion: APRIL 1 TO OCTOBER 30

Diversion Means: HEADGATE

WATER DIVERTED FROM BOULDER RIVER IS CONVEYED TO JEFFERSON SLOUGH WHICH IS USED AS A NATURAL CARRIER TO CONVEY WATER TO THE PLACE OF USE.

Period of Use: APRIL 1 TO OCTOBER 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	123.20		SW	2	1N	3W	JEFFERSON
2	6.80		SWSE	2	1N	3W	JEFFERSON
3	70.00		E2	3	1N	3W	JEFFERSON
4	9.20		W2NE	11	1N	3W	JEFFERSON
5	90.80		NW	11	1N	3W	JEFFERSON

Total: 300.00

Remarks:

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3406-00

3407-00

3408-00

THIS APPROPRIATION OF WATER TAKES WATER FROM THE BOULDER RIVER, TRIBUTARY TO JEFFERSON RIVER DRAINAGE (BASIN 41E) AND USES IT IN THE JEFFERSON RIVER DRAINAGE (BASIN 41G). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.