

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

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

CLAIMANT: Dorothy Domagala

CASE 41E-0124-R-2024
41E 10730-00

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 finding 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 10730-00 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 remark was 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 claimant an opportunity to file additional information or evidence.

The January 8, 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 claimant. On March 20, 2024 the DNRC Memorandum was filed making recommendations to modify the point of diversion legal description. On May 16, 2024 Dorothy Domagala filed her response stating her agreement with the recommendations. 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.

FINDING OF FACT

The Preliminary Decree states that the point of diversion legal description is the SESENE section 16, T4N, R6W, JEFFERSON. The legal description should be SWNE section 16, T4N, R6W, JEFFERSON. The issue remark should be removed as addressed and resolved.

CONCLUSION OF LAW

The information provided by the DNRC and the claimant is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Finding 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:

Dorothy Domagala
6947 W Jewell Dr
Lakewood, CO 80227

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

Water Right Number: 41E 10730-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: DOROTHY DOMAGALA
6947 W JEWELL DR
LAKEWOOD, CO 80227-2580

Priority Date: JULY 10, 1910

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FURROW/FLOOD

***Flow Rate:** 134.70 GPM

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

Climatic Area: 5 - LOW

***Maximum Acres:** 8.00

Source Name: NEZ PERCE 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		SWNE	16	4N	6W	JEFFERSON

Period of Diversion: APRIL 1 TO NOVEMBER 30

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO NOVEMBER 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	3.00		NWNE	16	4N	6W	JEFFERSON
2	5.00		NENW	16	4N	6W	JEFFERSON

Total: 8.00

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.

10728-00 10729-00 10730-00