

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

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CLAIMANTS: Susan Decker; Marilyn Vanina

OBJECTOR: United States of America (Bureau of Reclamation)

**CASE 41E-0133-R-2024**

41E 94332-00

41E 94333-00

41E 94334-00

**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**

The United States of America (USDI Bureau of Reclamation) objected to claims 41E 94333-00 and 41E 94334-00. Each of these three claims appeared in the Preliminary Decree with various issue remarks and notice remarks. On May 31, 2024 Susan Decker and the

United States of America (Bureau of Reclamation) filed a Stipulation To Resolve Objections ["Stipulation"]. Marilyn Vanina is deceased and her successor is unknown. The Stipulation is 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. Claim 41E 94332-00 appeared in the Preliminary Decree with the following remarks:

THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. 41E 94332-00, 41E 94333-00.

POINT OF DIVERSION AND RESERVOIR RECORD WERE 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 Stipulation states that the standard multiple use remark should be added to claim 41E 94333-00, referencing claims 41E 94332-00 and 41E 94333-00. These claims are based on the same Joseph Page notice of appropriation. That notice states that the appropriation was made on August 24, 1888. The notice was witnessed and notarized on September 10, 1888. Stockwater claim 41E 94332-00 has September 10, 1888 (the notarization date) as the priority date, while irrigation claim 41E 94333-00 has August 24, 1888 (the appropriation date) as the priority date. To eliminate any confusion in the future, the priority dates should be the same.

The Preliminary Decree states that the priority date is SEPTEMBER 10, 1888. The priority date should be AUGUST 24, 1888. The standard multiple use remark should be added, referencing claim 41E 94332-00 and 41E 94333-00. The issue remark concerning multiple use

should be removed as addressed and resolved.

The point of diversion and reservoir record notice remark does not raise unresolved issues which need to be addressed. The remark should be removed as having served its notice purpose.

2. Claim 41E 94333-00 appeared in the Preliminary Decree with the following remarks:

THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. 41E 94332-00, 41E 94333-00.

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 18.75 TIMES THE CAPACITY OF THE RESERVOIR.

The standard multiple use remark should be added, referencing claim 41E 94332-00 and 41E 94333-00. The issue remark concerning multiple use should be removed as addressed and resolved.

The Preliminary Decree states that the volume is 225.00 AC-FT. The volume should be 24.00 AC-FT. The volume issue remark should be removed as addressed and resolved.

The period of diversion remark does not raise an unresolved issue which needs to be addressed. The remark should be removed as having served its notice purpose.

3. Claim 41E 94334-00 appeared in the Preliminary Decree with the following remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

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 CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 56.3 TIMES THE CAPACITY OF THE RESERVOIR.

The Preliminary Decree states that the volume is 225.00 AC-FT. The volume should be 8.00 AC-FT. The volume issue remark should be removed as addressed and resolved.

The period of diversion and point of diversion notice remarks 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 settlement filed by the parties is sufficient to contradict and overcome the prima facie claims 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 for each 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:**

Susan Decker  
Marilyn Vanina  
59 Elgin Dr  
Butte, MT 59701

**Service Via Electronic Mail:**

Jennifer A. Najjar  
Alexa Penalosa  
US Dept of Justice, ENRD-NRS  
PO Box 7611  
Washington, DC 20044-7611  
(202) 305-0476  
Jennifer.Najjar@usdoj.gov  
Alexa.penalosa@usdoj.gov  
MontanaBasins.ENRD@USDOJ.GOV

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

**Water Right Number:** 41E 94332-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** SUSAN DECKER  
47 ELGIN DR  
BUTTE, MT 59701  
  
MARILYN VANINA  
59 ELGIN DR  
BUTTE, MT 59701-9500

**Priority Date:** AUGUST 24, 1888

**Type of Historical Right:** FILED

**Purpose (Use):** STOCK

**\*Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**\*Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** MORMON HILL 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	3	SWNESE	27	4N	7W	JEFFERSON

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

**Diversion Means:** DAM

2	3	SENESE	27	4N	7W	JEFFERSON
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**\*Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

3		NENWSW	26	4N	7W	JEFFERSON
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**\*Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

**Reservoir:** OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	
		NENWSW	26	4N	7W	JEFFERSON

**Diversion to Reservoir:** DIVERSION # 1

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
3	SENESE	27	4N	7W	JEFFERSON

**Diversion to Reservoir:** DIVERSION # 1

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
3	SWNESE	27	4N	7W	JEFFERSON

**Diversion to Reservoir:** DIVERSION # 1

**Period of Use:** APRIL 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			E2SE	27	4N	7W	JEFFERSON
2			W2SW	26	4N	7W	JEFFERSON

**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

94332-00            94333-00

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

**Water Right Number:** 41E 94333-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** SUSAN DECKER  
47 ELGIN DR  
BUTTE, MT 59701  
  
MARILYN VANINA  
59 ELGIN DR  
BUTTE, MT 59701-9500

**Priority Date:** AUGUST 24, 1888

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

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

**Volume:** 24.00 AC-FT

**Climatic Area:** 5 - LOW

**Maximum Acres:** 60.00

**Source Name:** MORMON HILL 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		SWNESE	27	4N	7W	JEFFERSON

**\*Period of Diversion:** MAY 1 TO AUGUST 1

**Diversion Means:** HEADGATE

**Reservoir:** OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENSW	26	4N	7W	JEFFERSON

**Diversion to Reservoir:** DIVERSION # 1

**Depth:** 10.00 FEET

**Surface Area:** 0.60 ACRES

**Capacity:** 2.40 ACRE-FEET

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	S2NESE	27	4N	7W	JEFFERSON

**Diversion to Reservoir:** DIVERSION # 1

**Depth:** 10.00 FEET  
**Surface Area:** 1.20 ACRES  
**Capacity:** 4.80 ACRE-FEET

**Reservoir:** OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SENESE	27	4N	7W	JEFFERSON

**Diversion to Reservoir:** DIVERSION # 1

**Depth:** 10.00 FEET  
**Surface Area:** 1.20 ACRES  
**Capacity:** 4.80 ACRE-FEET

**Period of Use:** MAY 1 TO AUGUST 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	44.00		SW	26	4N	7W	JEFFERSON
2	3.00		NESE	27	4N	7W	JEFFERSON
3	13.00		S2S2NW	26	4N	7W	JEFFERSON
<b>Total:</b>	<u>60.00</u>						

**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

94332-00            94333-00



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

**Water Right Number:** 41E 94334-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** SUSAN DECKER  
47 ELGIN DR  
BUTTE, MT 59701  
  
MARILYN VANINA  
59 ELGIN DR  
BUTTE, MT 59701-9500

**Priority Date:** AUGUST 24, 1888

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

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

**Volume:** 8.00 AC-FT

**Climatic Area:** 5 - LOW

**Maximum Acres:** 39.00

**Source Name:** LOCKHART 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		NESENE	27	4N	7W	JEFFERSON

**\*Period of Diversion:** MAY 1 TO AUGUST 1

**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>
	NWSWNW	26	4N	7W	JEFFERSON

**Diversion to Reservoir:** DIVERSION # 1

**Depth:** 10.00 FEET

**Surface Area:** 1.00 ACRES

**Capacity:** 4.00 ACRE-FEET

**Period of Use:** MAY 1 TO AUGUST 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	27.00		SWNW	26	4N	7W	JEFFERSON

2	12.00	W2SENW	26	4N	7W	JEFFERSON
<b>Total:</b>	<u>39.00</u>					

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

94334-00

94335-00