

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: BNSF Railway Co.

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

CASE 41E-0160-R-2024

41E 142641-00

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

The United States of America (Bureau of Land Management) objected to BNSF Railway Co. claim 41E 142641-00. On June 5, 2024 the parties filed a Stipulation To Resolve Objection. The Stipulation is viewable in the Court’s FullCourt Enterprise case management system.

APPLICABLE LAW

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 following clarification remark should be added to the place of use: THE PLACE OF USE IS LIMITED TO THE RIGHT OF WAY SURROUNDING THE RAILROAD TRACKS WITHIN NENW, NWNW, AND SWNW OF SECTION 29, TOWNSHIP 6N, RANGE 4W, JEFFERSON COUNTY. THE PLACE OF USE DOES NOT INCLUDE FEDERAL LAND.

CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the prima facie claim.

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

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

Water Right Number: 41E 142641-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: BNSF RAILWAY CO
% BLAINE BILDERBACK
2650 LOU MENK DR # MOB-2
FORT WORTH, TX 76131-2830

Priority Date: JULY 27, 1901

Type of Historical Right: FILED

Purpose (Use): INDUSTRIAL

Flow Rate: 13.46 GPM

Volume: 10.89 AC-FT

Source Name: SPRING, UNNAMED TRIBUTARY OF BOULDER RIVER

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		SWSW	20	6N	4W	JEFFERSON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: SUMP

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			NW	29	6N	4W	JEFFERSON

THE PLACE OF USE IS LIMITED TO THE RIGHT OF WAY SURROUNDING THE RAILROAD TRACKS WITHIN NENW, NWNW, AND SWNW OF SECTION 29 TOWNSHIP 6N, RANGE 4W, JEFFERSON COUNTY. THE PLACE OF USE DOES NOT INCLUDE FEDERAL LAND.