

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: ~~Compton Ranch LLC~~; Paul T. Smith Ranches Inc.

CASE 41E-0169-R-2024
41E 110740-00

OBJECTOR: Paul T. Smith Ranches Inc.

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

Paul T. Smith Ranches Inc. objected to this claim. This claim appeared in the Preliminary Decree with the following issue remarks:

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 CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. THERE MAY BE PROBLEMS WITH VOLUME. TO ASSURE THE ORDERLY ADMINISTRATION OF WATER RIGHTS, THE WATER COURTS WILL SET A HEARING TO DETERMINE THESE ISSUES IF NO OBJECTIONS ARE MADE.

THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 5801.26 ACRE-FEET PER YEAR.

On May 8, 2021 the parties filed a Stipulation And Agreement. The Stipulation And Agreement 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. As recited in the Stipulation And Agreement, this claim was adjudicated in Cases 41E-7 and 41E-87 during the Temporary Preliminary Decree proceedings, but not all of the changes were made to the abstract of claim prior to inclusion in this Preliminary Decree. To fully effect the decisions made in Cases 41E-7 and 41E-87:

- the ownership should be changed by removing Compton Ranch LLC and the ownership information remark
- the overlapping ownership/place of use issue remark should be

removed.

2. The Preliminary Decree states that the volume is 6,275.00 AC-FT. This is a direct flow irrigation claim. The volume quantification should be removed and the following standard volume remark should be added: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE. The volume issue remarks should be removed as addressed and resolved.

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

POINT OF DIVERSION AND DITCH NAME 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 remark provides notice of these changes made prior to issuance of the Preliminary Decree and 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 settlement filed by the parties is sufficient to contradict and overcome the prima facie claim 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 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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Note: Caption and Service List Updated 6-17-24

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

Water Right Number: 41E 110740-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: SMITH, PAUL T RANCHES INC
502 LOWER VALLEY RD
BOULDER, MT 59632

Priority Date: JUNE 14, 1866

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 11.25 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: 645.00

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		NWNENW	19	5N	3W	JEFFERSON

Period of Diversion: MARCH 1 TO NOVEMBER 15

Diversion Means: HEADGATE

Ditch Name: MCCAULEY-MURPHY-SMITH DITCH

Period of Use: MARCH 1 TO NOVEMBER 15

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	20.00		SESE	20	5N	3W	JEFFERSON
2	20.00		SWSW	21	5N	3W	JEFFERSON
3	100.00		NW	34	5N	3W	JEFFERSON
4	120.00		NW	28	5N	3W	JEFFERSON
5	140.00		SE	28	5N	3W	JEFFERSON
6	103.00		SW	28	5N	3W	JEFFERSON
7	75.00		NE	33	5N	3W	JEFFERSON
8	20.00		NENE	29	5N	3W	JEFFERSON
9	40.00		SWSW	27	5N	3W	JEFFERSON
10	7.00		SWSWNE	28	5N	3W	JEFFERSON

Total: 645.00

Remarks:

AUTHORIZATION TO CHANGE (SEVER/SELL) POINT OF DIVERSION COMPLETED 10/31/1991 . FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE. SEE 41E 19276-01

THE BASIS OF THIS APPROPRIATION RIGHT IS THE B.F. HOOPES RIGHT IN BOOK D OF WATER RIGHTS PAGE 207, JEFFERSON CO. MONTANA, PRIORITY DATE 06/14/1866. THAT RIGHT IS JOINTLY OWNED BY ED MURPHY RANCHES, INC. (AND THEIR SUCCESSORS IN INTEREST) AND PAUL T. SMITH RANCHES, INC. HISTORICALLY 50 MINERS INCHES (1.25 CFS) WAS USED BY ED MURPHY RANCHES, INC. AND 450 MINERS INCHES (11.25 CFS) USED BY PAUL T. SMITH RANCHES, INC. CLAIM 19276-00 OWNED BY ED MURPHY RANCHES, INC. AND EUGENE AND JULIANNE COMPTON ALSO IS BASED UPON THE SAME B.F. HOOPES RIGHT. THE USE OF THESE TWO CLAIMS SHALL NOT EXCEED 500 MINERS INCHES AS HISTORICALLY USED.