

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: Dunn Canyon Cattle Co.

OBJECTOR: Dunn Canyon Cattle Co.

CASE 41E-0176-R-2024

41E 94256-00

41E 30128898

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

Dunn Canyon Cattle Co. objected to its claim 41E 30128898. On April 30, 2024 Dunn Canyon Cattle Co. filed a Motion To Modify Preliminary Decree Of Water Rights 41E 94256-00 And 41E 30128898 To Resolve Objections And DNRC Issue Remarks [“Motion”]. This settlement documentation 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.

FINDINGS OF FACT

1. For claim 41E 94256-00, the Preliminary Decree includes the following issue remark:

THE TEMPORARY PRELIMINARY DECREE ERRONEOUSLY INCLUDED A SECOND POINT OF DIVERSION IN SECTION 24. THIS SECOND POINT OF DIVERSION WAS NOT DEVELOPED UNTIL AFTER 07/01/1973, AND SHOULD NOT APPEAR ON THIS WATER RIGHT UNTIL AFTER ISSUANCE OF THE FINAL DECREE. SEE THE AUTHORIZATION TO CHANGE REMARK ABOVE FOR MORE INFORMATION.

and the following notice remarks:

THE TIMELY FILED OBJECTION OF EMMET J. MCCAULEY AND MARGY B. MCCAULEY WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE PLACE OF USE AND PRIORITY DATE. BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

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 Motion requests removal of the remarks, noting that the issue remark is erroneous as there is no "second point of diversion" on the abstract for this claim. The issue remark should be removed as erroneous.

The notice remarks provide notice of changes made during the Temporary Preliminary Decree proceedings and prior to issuance of the Preliminary Decree. The remarks do not raise unresolved issues which need to be addressed. There are no proceedings required for these remarks. The remarks should be removed as having served their notice purposes.

2. For claim 41E 30128898, the Preliminary Decree includes the following issue remark:

THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS .81 ACRE-FEET PER YEAR.

and the following notice remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41E DECREE ISSUED 06/20/1985.

The Preliminary Decree states that the volume is 1.50 AC-FT. As requested, the volume should be 0.81 AC-FT. The volume issue remark should be removed as addressed and resolved.

The notice remark does not raise an unresolved issue which needs to be addressed. There are no proceedings required for this remark. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The settlement filed by the claimant 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 grant the Motion and 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 Electronic Mail:

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

Water Right Number: 41E 94256-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: DUNN CANYON CATTLE CO
CHRIS CAREY
2300 MT HWY 69
BOULDER, MT 59632-9732

***Priority Date:** APRIL 1, 1895

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

***Flow Rate:** 3.85 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:** 77.00

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	3	SENWSW	18	4N	2W	JEFFERSON

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: HEADGATE

Ditch Name: TWOHY DITCH

DITCH NAME ALSO KNOWN AS TWOHY-BRADY DITCH OR TWOHY PUMP DITCH.

Period of Use: APRIL 15 TO OCTOBER 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	31.00		NE	19	4N	2W	JEFFERSON
2	40.00		NW	29	4N	2W	JEFFERSON
3	6.00		N2N2SW	29	4N	2W	JEFFERSON

Total: 77.00

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.

93901-00	94249-00	94251-00	94252-00	94254-00	94256-00
94258-00	94259-00	94270-00			

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

Water Right Number: 41E 30128898 STATEMENT OF CLAIM
Version: 2 -- POST DECREE
Status: ACTIVE

Owners: DUNN CANYON CATTLE CO
CHRIS CAREY
2300 MT HWY 69
BOULDER, MT 59632-9732

Priority Date: JANUARY 1, 1919

***Type of Historical Right:** USE

Purpose (Use): DOMESTIC

Flow Rate: 1.00 GPM

Volume: 0.81 AC-FT

Households: 1

Source Name: GROUNDWATER

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		SWNENW	12	3N	3W	JEFFERSON

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: WELL

Period of Use: MAY 1 TO OCTOBER 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			SWNENW	12	3N	3W	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.

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