

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

CLAIMANTS: Floyd Sayler; Patricia Sayler

OBJECTORS: Floyd Sayler; Patricia Sayler

CASE 41E-0206-R-2024

41E 102987-00

41E 30160079

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

Floyd Sayler and Patricia Sayler objected to this stockwater claim requesting generation of an implied claim for domestic use of the same right. On June 6, 2024 the Saylers' Notice Of Filing Of Information was filed, including the Affidavit of Patricia Sayler, daughter of the original claimants Edward J. Murphy and Dorothy P. Murphy. This settlement document is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

“‘Implied Claim’ means a claim authorized by the water court to be separated and individually identified when a statement of claim includes multiple rights.” Rule 2(a)(33), W.R.C.E.R.

From 41P-108 “Circle S Ranch, Inc.” Order On Motion To Modify Claims 5-16-19, at 2019 Mont. Water LEXIS 8, page 5:

The Water Court recognizes implied claims in certain circumstances *In re Musselshell River below Roundup*, Case 40C-47, 1994 Mont. Water LEXIS 18, *78 (July 14, 1994). However, before the Court will recognize an implied claim, the claimant must prove that several factors exist. These include: (1) proof of two or more water rights in the original claim form or the material submitted with the claim form; (2) proof of historic use corroborating the implied claim; and (3) proof that recognizing the implied claim(s) will avoid causing a change to historic water use or increase the historic burden to other water users. *In re Foss*, Case 76HF-580, 2013 Mont. Water LEXIS 17, *32 (Jan. 31, 2013); *In re Martinell*, Case 41A-148, 2018 Mont. Water LEXIS 3, *6 (June 14, 2018). These standards assure that implied claims are not used to revive a claim that was forfeited as a matter of law by missing the filing deadline. Mont. Code Ann. § 85-2-226 (establishing conclusive presumption of abandonment of for claims not timely filed); *In re Climbing Arrow Ranch*, Case 41F-A19, 2019 Mont. Water LEXIS 1 (Mar. 6, 2019). **The implied claim process also cannot be used to expand the elements of a statement of claim.** *In re Eliasson Ranch Company*, Order Amending and Adopting Master’s Report, Case 40A-115, 2004 Mont. Water LEXIS 2, *6 (Jun. 28, 2004) (“*Eliasson*”).

(**Bold** emphasis added.)

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. A copy of the Joel A. Harrington Notice Of Water Location, recorded June 2, 1887 is attached to the Statement of Claim. It states the appropriation is 200 miner’s inches from springs arising in the SE of section 3, T3N, R7W. The second paragraph states that the water will

be used for mining and related activities, irrigation, manufacturing, and “culinary and other purposes.” The marked topographic map attached to the Statement of Claim identifies the Murphy Ranch buildings. The Statement of Claim is for 20.00 GPM diverted by pipeline, for a total of 3.00 AC-FT per year.

2. The Declaration of Patricia Saylor states that she has lived on the property since she moved there with her parents Dorothy and Edward Murphy in 1963, that she has worked on the ranch for 61 years, and has “intimate knowledge of how the water rights have been historically used on our property.” (Paragraph 6 of the Declaration) She states that the pipeline from the spring has two diversions from it: for the dairy processing (in the past) and stockwater, and to a holding tank near the house for domestic supply. The pipes have been replaced to assure safe drinking water. “Today the water is still used for household use and water troughs to water our beef cattle.” (Paragraph 7 of the Declaration) She also confirms that the water has always been used for stockwater and domestic use, and that generating the implied claim will not enlarge the historical use of the water.

3. The requested implied claim elements are the same as claim 41E 102987-00 except the purpose would be domestic and the volume would be 14.00 AC-FT instead of the standard stockwater volume remark. The implied claim process also cannot be used to expand the elements of a statement of claim. The Statement of Claim is for 3.00 AC-FT. The volume claimed cannot be expanded to 17.00 AC-FT in order to generate the implied claim. The maximum volume can only be 3.00 AC-FT.

4. Claim 41E 102987-00 should remain for the stock use. Implied claim 41E 30160079 should be used for the domestic use.

5. For claim 41E 102987-00, there are no changes to be made to the elements of the claim. The following multiple use remark should be added to the abstract of this claim:

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.
102987-00 30160079

6. The elements of implied claim 41E 30160079 should be the same as 41E 102987-00 except the purpose should be DOMESTIC and the volume should be 3.00 AC-FT. The same multiple use remark should be included on the abstract for this claim.

CONCLUSION OF LAW

Statement of Claim 41E 102987-00 and its attachments plus the Information filed by Floyd Sayler and Patricia Sayler are sufficient to generate an implied claim.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court generate implied claim 41E 30160079 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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Note: Caption Updated 6-24-24

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

Water Right Number: 41E 102987-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: FLOYD SAYLER
17 TREASURE STATE RD
BUTTE, MT 59701-9502

PATRICIA SAYLER
17 TREASURE STATE RD
BUTTE, MT 59701-9502

Priority Date: MAY 13, 1887

Type of Historical Right: FILED

Purpose (Use): STOCK

Flow Rate: 20.00 GPM

*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: SPRING, UNNAMED TRIBUTARY OF BISON CREEK

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		S2SE	3	3N	7W	JEFFERSON
Period of Diversion: JANUARY 1 TO DECEMBER 31						
Diversion Means: PIPELINE						

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			W2SE	3	3N	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.

102987-00 30160079

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

Water Right Number: 41E 30160079 STATEMENT OF CLAIM
Version: 1 -- ORIGINAL RIGHT
Status: ACTIVE

Owners: FLOYD SAYLER
17 TREASURE STATE RD
BUTTE, MT 59701-9502

PATRICIA SAYLER
17 TREASURE STATE RD
BUTTE, MT 59701-9502

Priority Date: MAY 13, 1887
Type of Historical Right: FILED
Purpose (Use): DOMESTIC
Flow Rate: 20.00 GPM
Volume: 3.00 AC-FT
Households: 1

Source Name: SPRING, UNNAMED TRIBUTARY OF BISON CREEK
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		S2SE	3	3N	7W	JEFFERSON	
Period of Diversion:		JANUARY 1 TO DECEMBER 31					
Diversion Means:		PIPELINE					
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			W2SE	3	3N	7W	JEFFERSON

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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.

102987-00 30160079